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Agriculture

7

PARTS 700 TO 899

Revised as of January 1, 1986

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Agriculture

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PARTS 700 TO 899

Revised as of January 1, 1986

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AS OF JANUARY 1, 1986

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READEX FICHE

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 1, 1986.

THIS TITLE

Title 7—AGRICULTURE is composed of sixteen volumes. The parts in these volumes are arranged in the following order: Parts 0-45, Parts 46-51, Part 52, Parts 53-209, Parts 210-299, Parts 300-399, Parts 400-699, Parts 700-899, Parts 900-999, Parts 1000-1059, Parts 1060-1119, Parts 1120-1199, Parts 1200-1499, Parts 1500-1899, Parts 1900-1944, and Part 1945-End. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the volume containing Parts 900-999. All marketing agreements and orders for milk appear in the three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAM

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AUTHORITY: Pub. L. 96-108, 93 Stat. 821, 835, unless otherwise noted.

SOURCE: 45 FR 14009, Mar. 4, 1980, unless otherwise noted.

Subpart A—General

§ 700.1 Purpose and scope.

(a) The purpose of this part is for the U.S. Department of Agriculture (USDA), with certain concurrences by the U.S. Environmental Protection Agency (EPA), to set forth regulations to carry out an experimental Rural Clean Water Program (RCWP) as authorized by the Agriculture, Rural Development and Related Agencies Appropriations Act, fiscal year 1980, Pub. L. 96-108 (hereinafter referred to as the "1980 Appropriations Act") and subsequent appropriations.

(b) The RCWP will provide financial and technical assistance to private land owners and operators (participants) having control of agricultural land. The assistance is provided through long-term contracts of 3 to 10 years to install best management practices (BMPs) in approved project areas which have critical water quality problems resulting from agricultural activities. The project area must reflect the water quality priority concerns developed through the established water quality management program process. Participation RCWP is voluntary.

(c) This is a new USDA program using the experiences under various on-going USDA programs and the established water quality management program of EPA.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.2 Objective.

The objectives of the RCWP are to:

(a) Improve impaired water use and quality in the approved project area in the most cost-effective manner possible in keeping with the provision of adequate supplies of food, fiber, and a quality environment.

(b) Assist agricultural land owners and operators to reduce agricultural nonpoint source water pollutants and to improve water quality in rural areas to meet water quality standards or water quality goals.

(c) Develop and test programs, policies and procedures for the control of agricultural nonpoint source pollution.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.3 Administration.

At the national level, the Secretary of Agriculture will administer the RCWP in consultation with the Administrator, EPA, including EPA's concurrence in the selection of the BMPs, as provided in the 1980 Appropriations Act and subsequent appropriations. Authority to approve projects is reserved to the Secretary. The Secretary of Agriculture hereby delegates responsibility for administration of the program to the Administrator, Agricultural Stabilization and Conservation Service (ASCS) and the coordination of technical assistance to the Chief, Soil Conservation Service (SCS). ASCS will be assisted by other USDA agencies in accordance with existing authorities.

(a) A National Rural Clean Water Coordinating Committee (NCC), chaired by the Administrator, ASCS, will assist in carrying out the RCWP.

(b) A State Rural Clean Water Coordinating Committee (SCC) will assist the State ASC Committee in administering the program. The State ASC Committee Chairperson will chair the SCC. Where two or more States are involved in a project area the Deputy Administrator, State and County Operations (DASCO), ASCS, shall develop a coordinating process.

(c) A Local Rural Clean Water Coordinating Committee (LCC) will be established to assure coordination at the project level. The LCC committee will be chaired by the County ASC Committee Chairperson and will assist the County ASC Committee as provided in these regulations and as otherwise developed by the SCC and the LCC. Where two or more counties are involved in a project area, the SCC shall develop a coordination process.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.4 Definitions.

(a) *Adequate Level of Participation.* An adequate level of participation is reached when participants having control of 75 percent (unless a different level is approved by the Administrator, ASCS, with the concurrence of the NCC), of the identified critical area(s) or source(s) of the agricultural nonpoint source pollution problem in the project area, are under contract.

(b) *Administrative Services.* The administration of the RCWP except for the technical phases as assigned in § 700.5 of these regulations.

(c) *Agricultural Land.* That portion(s) of a farm or ranch used to produce: Grains, row crops, seed crops, vegetables, hay, pasture, orchards, vineyards, trees, field grown ornamentals, livestock or other agricultural commodities.

(d) *Agricultural Nonpoint Source Pollution.* Pollution originating from diffuse sources, including, but not limited to, land areas and return flows from agricultural lands such as:

(1) Animal waste areas and land used for livestock and/or crop production, or

(2) Lands with silviculturally related pollution.

(3) Concentrated animal feeding operations defined as point sources in 40 CFR 125.1 and 125.51, are not eligible for assistance under RCWP.

(e) *Applicant.* A person in an approved project area who applies for RCWP assistance.

(f) *Average Cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMPs or an identifiable unit thereof.

(g) *Best Management Practice (BMP).* A single practice or a system of practices to improve water quality included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution.

(h) *BMP Costs.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials and services for carrying out BMPs or an identifiable unit of a BMP. Loss of income from crops during the first twelve months following the conversion of productive cropland to permanent vegetative cover or trees may be considered a part of the BMP cost for a project where it is determined that harvesting or grazing restrictions are necessary in order to establish properly the practice and the reimbursement for loss of income is necessary to provide incentives to achieve an adequate level of participation as defined in 7 CFR 700.4(a). If the participant uses personal resources, the cost includes the computed value of personal labor, equipment use, and materials.

(i) *BMP Life Span.* Each BMP shall have a life span of not less than 5 years unless otherwise approved by the Administrator, ASCS.

(j) *Conservation District (CD).* A subdivision of a State or territory organized pursuant to the State Soil Conservation District Law, as amended. In some States these are called soil conservation districts, soil and water conservation districts, resource conservation districts, or natural resource districts.

(k) *Contract.* The document that includes the water-quality plan and is executed by the participant and approved by the County ASC Committee. Such document evidences the agreement between parties for carrying out BMPs on the participant's land.

(l) *Contract Period.* That period of time, 3 to 10 years, established as necessary to implement the BMPs needed to solve the water quality problems in the contract.

(m) *Cost-Share Level.* That percentage of the total cost of installing a BMP which is to be borne by the government under the RCWP.

(n) *Cost Share Rate.* The amount of money per unit (cubic yard, acre, etc.) to be paid for carrying out BMPs under the RCWP.

(o) *County ASC Committee.* The County ASC Committee elected by the farmers/ranchers in the county as provided for under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(p) *Critical Areas or Sources.* Those designated areas or sources of agricultural nonpoint source pollutants identified in the project area as having the most significant impact on the impaired use of the receiving waters.

(q) *Direct Costs.* The costs that can be specifically identified with the program.

(r) *Farmer/Rancher.* An owner and/or operator who has a vested interest in the operation of the farm or ranch.

(s) *Federal Funds Authorized.* The total amount of funds authorized to approved projects.

(t) *Fiscal Year.* The fiscal year beginning October 1 and ending September 30.

(u) *Identifiable Unit.* A part of a BMP that can be clearly identified as a separate component in carrying out BMPs in the water quality plan.

(v) *Implementation.* The act of carrying out or executing a water quality plan, including both installation and maintenance of BMPs.

(w) *Maximum Payment Limitation.* The total amount of RCWP payments which a participant may receive for the full contract period. The total amount of such payments shall not exceed $50,000.

(x) *Offsite Benefits.* Favorable effects of BMPs that occur away from the land of the participant receiving RCWP assistance and which accrue to the public.

(y) *Participant.* A land owner and/or operator who is an agricultural producer and applies for and receives assistance under RCWP.

(z) *Participant's Water Quality Plan.* The plan that identifies critical agricultural nonpoint sources of pollution, identifies water quality problems and schedules the application of BMPs which contribute to meeting the water quality objectives of the project.

(aa) *Plan of Work.* A written strategy for implementing the approved project, outlining the actions needed and to be taken by various USDA, State and local agencies and interested groups.

(bb) *Pooling Agreement.* An agreement between two or more participants or ranchers to pool their resources to treat a common critical area or source.

(cc) *Privately-Owned Rural Land.* Lands not owned by Federal, State, or local governments that include cropland, pastureland, forest land, rangeland, and other associated lands.

(dd) *Project Area.* The geographic determination included in the project application as agreed upon by the SCC and LCC, and approved by the Secretary, utilizing the water quality planning process which identifies agricultural nonpoint source water quality problems.

(ee) *Project Life Span.* The maximum total life span of a project shall be not greater than fifteen (15) years from the date RCWP funds are first made available for the project.

(ff) *RCWP Project.* The total system of BMPs, administrative support, institutional arrangements, cost-sharing, technical and community support that are authorized in a RCWP project application.

(gg) *Secretary.* The Secretary of the U.S. Department of Agriculture.

(hh) *Silvicultural.* The science and art of cultivating (growing and tending) forest crops based on the knowledge of forestry. Silviculture-related pollution is included as agriculture nonpoint source pollution in the RCWP.

(ii) *Standards and Specifications.* Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMPs.

(jj) *State ASC Committee (STC).* The State ASC Committee appointed by the Secretary in accordance with Section 8 b of the Soil Conservation and Domestic Allotment Act, as amended.

(kk) *Technical Assistance.* The preparation of the participant's water quality plan, the design, layout and implementation of BMPs to accomplish the purposes of the water quality plan, and water quality monitoring and evaluation.

(ll) *Water Quality Management Program.* A Federal-state-local program for addressing and solving point and non-point source pollution problems consistent with national clean water goals. The basic authority for this program is in section 208 of the Federal Water Pollution Control Act, as amended, (Pub. L. 92-500).

[45 FR 14009, Mar. 4 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.5 Responsibilities.

(a) *The United States Department of Agriculture (USDA) shall:*

(1) Administer the RCWP by entering into contracts with land owners and operators to install and maintain BMPs to control agricultural nonpoint source pollution for improved water quality and:

(i) Consult with EPA in the selection of projects;

(ii) Obtain concurrence from EPA in approval of BMPs; and

(iii) Insure an adequate joint USDA/EPA monitoring and evaluation plan is carried out on selected projects.

(2) Provide technical assistance and share the cost of carrying out BMPs as specified in the contracts.

(3) Evaluate the overall effectiveness of the program in improving water quality.

(b) *The Environmental Protection Agency (EPA) will:*

(1) Participate on the NCC, SCC and LCC.

(2) Furnish information from the water quality management planning process which can assist in identifying areas with the most critical water quality problems for project applications.

(3) Participate in the approval of project applications for funding.

(4) Concur with the Secretary on BMPs recommended by the County and State ASC Committees and approved by the Secretary for funding, or recommended by the Secretary, with concurrence of the Administrator, EPA, and approved by the State and County ASC Committees.

(5) Assist USDA in evaluating the effectiveness of the proggram in improving water quality, including concurrence on projects selected for comprehensive monitoring and evaluation and development of the criteria for the comprehensive, joint USDA/EPA water quality monitoring, evaluation, and analysis program.

(c) *The Agricultural Stabilization and Conservation Service shall:*

(1) Serve as chairperson of the NCC, SCC and LCC and be responsible for developing and administering the RCWP.

(2) Provide to the Secretary those project applications recommended for approval, including the recommendations of the NCC.

(3) Through County ASCS Offices, provide the administrative support in all approved RCWP projects, such as accepting applications, preparing and approving contracts, carrying out funds control, issuing cost-share payments, otherwise administering contracts and payments, provide compliance oversight, maintain records and develop reports.

(4) Enter into agreements with Federal, State and local agencies and others as needed for support to be provided in an approved RCWP project.

(5) Through County and Community ASC Committees work with landowners and operators in the project area to encourage participation.

(6) Develop cost-share rates for installing needed BMPs.

(7) Assure that RCWP is in addition to and is coordinated with other related programs.

(8) Provide guidance to State and County ASC Committees and coordinate the Agricultural Conservation Program (ACP), the Forestry Incentives Program (FIP), and related conservation programs, with RCWP.

(9) Allocate project funds to County ASC Committees in the approved project areas.

(10) Designate the State ASC Chairperson where a project area involves a part(s) of two or more States to chair the SCC, for that project.

(d) *The Soil Conservation Service (SCS) shall:*

(1) Participate on the NCC, SCC and LCC.

(2) Coordinate technical assistance and recommend appropriate agency or group to provide technical assistance on a project by project basis.

(3) Provide technical assistance for the appropriate BMPs.

(4) Assist the LCC in developing criteria for use by the County ASC Committees and the Conservation Districts in determining priorities of assistance among individual applicants for developing the water quality plan.

(5) Provide technical assistance in developing and certifying the technical adequacy of the participant's water quality plan.

(e) *The Forest Service (FS) shall:*

(1) Participate on the NCC and as appropriate, SCC and LCC.

(2) Have technical responsibility for forestry.

(3) Provide technical assistance for appropriate BMPs, by providing technical assistance through the State Forestry Agency (State Forester as appropriate) for planning, applying and maintaining forestry BMPs.

(4) Participate in the monitoring and evaluation as appropriate.

(5) As appropriate, assist in developing the water quality plan to assure that the most critical water quality problems are addressed.

(f) *The Science and Education Administration (SEA), through the State and County Extension Services, Appropriate, shall:*

(1) Participate on the NCC, SCC and LCC.

(2) Develop, implement, and coordinate informational and educational programs for agricultural nonpoint source water pollution control.

(3) Encourage the State and County Extension Services to develop and carry out a comprehensive educational and informational program.

(4) Provide technical assistance for appropriate BMPs including, but not limited to, fertilizer management, pest management, conservation tillage, and animal waste as appropriate.

(g) *The Economics and Statistics Service (ESS) shall:*

(1) Participate on the NCC and as appropriate, SCC and LCC.

(2) Assist in the economic evaluation of RCWP projects and BMPs.

(3) Make data available from existing and planned ESS surveys relating to water quality and related matters.

(4) Conduct socioeconomic research, within ESS authorities and funds, on relevant policy and program issues pertinent to RCWP.

(5) Assist in the annual program evaluation and be responsible for the economic component of the comprehensive evaluation of selected projects.

(h) *The Farmers Home Administration (FmHA) shall:*

(1) Participate on the NCC, SCC and LCC.

(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.

(3) Assist in the annual program evaluation.

(i) *The National Rural Clean Water Coordinating Committee (NCC).* The NCC is chaired by the Administrator, ASCS. Other members of the National Committee are Director, Office of Environmental Quality, the Administrators of, FmHA, and ESS: the Chief of FS, SCS; the Director of SEA; and the Assistant Administrator for Water and Waste Management, EPA. Nonfederal agencies such as Conservation Districts, State soil and water conservation agencies, State water quality management agencies, and other organizations may attend as observers. The duties of the NCC are to:

(1) Assist the Administrator, ASCS, in developing the program regulations and procedures.

(2) Recommend to the Administrator, ASCS, the project applications to be approved.

(3) Advise the Secretary on the maximum Federal contribution to the total cost of the project and establish the maximum cost-share levels of BMPs.

(4) Assist in coordinating individual agency programs with the RCWP.

(5) Make recommendations as appropriate on the technical aspects of the program.

(6) Recommend project areas and criteria for comprehensive joint USDA/EPA water quality monitoring, evaluation, and analysis.

(7) Annually review the plans of work and recommend changes in the projects.

(8) Annually review the progress in each project and periodically advise the Secretary, the Under Secretary for International Affairs and Commodity Programs, and Assistant Secretary for Natural Resources and the Environment on program and policy issues.

(j) *The State Rural Clean Water Coordinating Committee (SCC).* The SCC is chaired by the STC chairperson. Members include a representative of the agency members on the NCC or their designee. Other members are the State water quality agency having responsibility for the water quality management program, the State soil and water conservation agency, the State Director, Cooperative Extension Service, and others, including those recommended by the Governor, and approved by the Chairperson of SCC. Other State and local agencies, and organizations, or individuals may attend as observers. The duties of the committee are to:

(1) Submit its recommendations for approval of project application(s) to the State ASC Committee for forwarding to the NCC, through the Administrator, ASCS.

(2) Insure that each project application referred to the state ASC committee includes a water quality monitoring plan which specifies the organization(s) responsible for general monitoring, including cost and budget breakdown by organization(s).

(3) Assure coordination of activities at the project level by assisting in determining the composition and responsibilities of the LCC.

(4) Assure adequate public participation, including public meeting(s), and appropriate environmental evaluation in the preparation of RCWP applications.

(5) Provide oversight for the RCWP in the State and to assist USDA and EPA in their comprehensive, joint water quality monitoring and evaluation of selected project areas, including coordination with the LCC.

(6) Develop procedures for coordination between the RCWP and other water quality programs.

(7) Assist the State ASC Committee in developing the membership of the LCC. For multi county projects, there will be one LCC.

(8) Annually review and approve the plan(s) of work and changes proposed by the LCC and forward a copy to the NCC through the administrator, ASCS.

(k) *The Local Rural Clean Water Coordinating Committee (LCC).* The LCC is chaired by the County ASC Committee Chairperson. Other members include a representative of the agency members on the NCC, or their designee, where applicable, and a representative of the soil and water conservation district, the designated water quality management agency, State forestry agency, the Director, County Extension Service, and others recommended by the LCC and approved by the STC. (Where more than one county is in a project area only one LCC will be established in the project area.) The duties of the committee are to ensure that a process exists and actions are taken to implement any approved project. The duties will include, among others which may be outlined by the SCC, the following:

(1) Assure an adequate level of public participation in implementing the project.

(2) Provide project coordination, including development of the plan of work for implementing the approved

project using various USDA agencies, local agencies and interested groups.

(i) Enlist resources from other agencies and local groups.

(ii) Conduct informational and educational activities relating to the project.

(iii) Develop criteria with the SCC for use by the County ASC Committee and the soil conservation district to establish priorities among individual applications for developing water quality plans.

(iv) Assure the development of an adequate plan for project monitoring and evaluation.

(3) Consult with SCC for coordination with USDA State officials, State water quality official, and EPA regional representatives to develop criteria for project plan of work and project coordination.

(4) Review the project Plan of Work annually and recommend changes in the approved project to the SCC.

(l) *State ASC Committee shall:*

(1) Provide the chairperson for the SCC and be responsible for administration of the RCWP project(s) in the State.

(2) Submit those project applications recommended by the SCC to the Administrator, ASCS.

(3) Provide overall administrative support for the RCWP through the County ASC Committee(s).

(4) Designate a County ASC Committee Chairperson to serve as Chairperson of the LCC in multi-county projects.

(5) Approve the BMPs for inclusion in project applications.

(6) Be responsible for all other administrative functions as provided in these regulations.

(m) *The Governor of each State, at the Governor's option, may:*

(1) Recommend to the SCC Chairperson appropriate additional individuals for membership on the SCC.

(2) Furnish to the SCC a listing of the water quality priority areas in the State which are to be used by the SCCs and LCCs in considering and developing project applications.

(n) *the State soil and water conservation agency will:*

(1) Participate on the SCC.

(2) Assist in preparing and submitting RCWP project applications.

(3) Carry out responsibilities of soil conservation districts, including participation on the LCC, where no soil conservation district exists.

(o) *The State water quality agency will:*

(1) Participate on the SCC.

(2) Provide expertise in preparing RCWP project applications.

(3) Assist in monitoring and evaluating the effectiveness of the water quality projects.

(p) *The County ASC Committee shall:*

(1) Be responsible for administration of the RCWP at the local level.

(2) Provide the chairperson of the LCC.

(3) Provide overall administrative support for the RCWP approved project through the ASCS County Office, including accepting applications, administering the contracts and making payments and preparing reports.

(4) Recommend approval of BMP's.

(5) Together with the Soil Conservation District, determine the priority for technical assistance among individual applicants for water quality plans bases on criteria developed by the LCC to assure that the most critical water quality problems are addressed.

(6) Establish the recommended cost share level for BMP's in the RCWP project applications in consultation with the LCC.

(7) Utilize the Community ASC Committee(s) and LCC in encouraging farmers in the project area to install needed BMPs on the priority basis developed by the LCC.

(8) Be responsible for developing, and annually reviewing, and carrying out the plan of work for the approved project.

(q) *The Soil Conservation District will:*

(1) Participate on the LCC.

(2) Assist in the preparation and submission of applications for the RCWP.

(3) Assist in the promotion of the approved RCWP project.

(4) Together with the County ASC Committee, determine the priority of technical assistance among individual applicants for water quality plans

based on criteria developed by the LCC to assure that the most critical water quality problems are addressed.

(5) Approve applicants' water quality plans and revisions.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.6 Officials not precluded from excercising authority.

Nothing in these regulations shall preclude the Secretary; Administrator, ASCS; NCC; or Deputy Administrator, State and County Operations, ASCS; from administering any or all phases of the RCWP programs delegated to the LCC, County ASC Committee, SCC, State ASC Committee or any employee(s) where the committee or employee fails to perform a function required in these regulations. In exercising this authority either the Secretary, Administrator, ASCS, or Deputy Administrator, ASCS, may delegate a person or persons to be in charge with full authority to carry out the program or other function(s) without regard to the LCC, ASC committee(s), or employee(s) for such period of time as is deemed necessary.

Subpart B—Project Authorization and Funding

§ 700.10 Applicability.

The RCWP is applicable in project areas that meet the criteria for eligibility contained in § 700.12 and are authorized for funding by the Secretary.

§ 700.11 Availability of funds.

(a) The allocation of funds to the County ASC Committee(s) in a project area is to be made on the basis of the total funds needed to carry out the approved project.

(b) The obligation of Federal funds for RCWP contracts with participants is to be made on the basis of the total contract costs.

§ 700.12 Eligible project areas.

(a) Only those project areas which reflect the water quality priority concerns developed through the established water quality management program planning process and have identified agricultural nonpoint source water quality problems are eligible for authorization under RCWP. Only those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligible for authorization, the area's water quality problems must be related to agricultural nonpoint source pollutants, including but not limited to, sediment, animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels.

§ 700.13 Project applications.

Existing and subsequent project applications submitted for consideration must contain adequate information on each item specified in § 700.14. Instructions on such information requirements will be issued by the Administrator, ASCS. Opportunity will be provided prior to final approval of a project for the LCC and the SCC, in consultation with the Govenor, through the applicable County and State ASC Committees, for modification necessary to bring them into conformance with the provisions of these regulations.

§ 700.14 Review and approval of project applications.

(a) In reviewing applications and recommending priorities, the NCC will consider the following:

(1) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

(i) State designated uses of the water affected.

(ii) Kinds, sources, and effects of pollutants.

(iii) Miles of stream or acres of water bodies affected, extent of groundwater contamination.

(2) Demonstration of public benefits from the project, including:

(i) Effects on human health.

(ii) Population benefited by improved water quality.

(iii) Effects on the natural environment.

(iv) Additional beneficial uses of the waters that result from improvement of the water quality.

(3) Economic, and technical feasibility to control water quality problems within the life of the project, including:

(i) Size of the area and extent of BMPs needed.

(ii) Cost per participant and cost per acre or source for solution of problem.

(iii) Cost effectiveness of BMPs.

(iv) Adequacy of planned actions to meet the project's objectives.

(4) Suitability of the project for the experimental RCWP in the testing of programs, policies and procedures for the control of agricultural non-point source pollution, including:

(i) A project representative of a geographic area with significant water quality problems.

(ii) The potential of the project for monitoring and evaluation, including existing base line data.

(5) State, local and other input in the project area, including:

(i) Funds for cost-sharing general monitoring and technical asistance.

(ii) Commitment of local leadership to promote the program.

(iii) Commitment of farmers and ranchers to participate in RCWP.

(6) The project's contribution to meeting the national water quality goals taking into consideration of other major sources of pollutants which affect the water quality in or near the project area.

(b) Based on the project application, the NCC is to recommend an upper limit of the Federal contribution to the total cost of the project. This includes both BMP cost-share and technical assistance costs.

(c) All project applications will be reviewed by EPA. BMPs approval for funding require EPA concurrence, except that the Secretary may assume EPA's concurrence, if EPA does not act within 15 days following receipt of the request for concurrence.

(d) The Secretary will approve projects for funding taking into consideration the recommendations of the NCC and consultation with EPA. The Chairperson, State ASC Committee, through the SCC, will assure that involved Federal, State, and local agencies are informed of the project approval.

§ 700.15 Transfer of funds.

(a) Upon approval of a project, the Administrator, ASCS, will transfer funds to the State(s) ASC Committee for funding the project. The State committee will transfer funds to the County ASC Committee(s) for the county or counties in an approved project.

(b) ASCS will transfer funds to the applicable agency or organization providing specific technical assistance and/or expanded informatioin and education. The transfer will be made on a project by project basis.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.16 Termination of project funding.

(a) Based on evidence of failure to accomplish the approved project objectives, including inadequate level of participation, the Administrator, ASCS, may issue a termination notice after conferring with the Administrator, EPA, and the NCC.

(b) The State ASC Committee shall give 10-day written notice to the applicable County ASC Committee of intent to terminate project funding. The termination shall establish the effective date of termination and the date for return of funds.

(c) After receipt of a project termination, the County ASC Committee shall not make any new commitments or enter into any new RCWP contracts. Those contracts in force at the time of project termination will remain in force until completed.

Subpart C—Participant's RCWP Contracts

§ 700.20 Eligible land.

RCWP is only applicable to privately owned agricultural lands in approved project areas. Indian tribal lands and lands owned by irrigation districts are eligible lands.

§ 700.21 Eligible person (participant).

(a) Any land owner or operator whose land or activities in a project area is contributing to the area's agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract. For the purpose of this section, an eligible person is an individual, partnership, corporation (except corporations whose stock is publicly traded), Indian tribe, irrigation district or other entity.

(b) Federal, State or local governments, or subdivisions thereof (except irrigation districts), are not considered as an eligible person for RCWP contracts.

(c) This program will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1 through 15.12)

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.22 Application for assistance.

(a) Land owners or operators in an approved project area must apply for RCWP assistance through the office of the County ASC Committee(s) by completing the prescribed application form.

(b) The priority for developing water quality plans among applicants is to be determined by the County ASC Committee and the soil conservation district based on the criteria developed by the LCC in consultation with the SCC, with technical assistance from SCS.

§ 700.23 Water quality plan.

(a) The participant's water quality plan, developed with technical assistance and certification by the SCS or its designee and approved by the CD, is to include appropriate approved BMPs. Such BMPs must reduce the amount of pollutants that enter a stream, aquifer, or lake by:

(1) Methods such as reducing the application rates or changing the application methods or potential pollutants.

(2) Methods such as practices or combinations of practices which prevent potential pollutants from leaving source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participants' water quality plans shall include BMPs for the treatment of all critical areas or sources on the farm on that land within the project area regardless of eligibility for cost-sharing with RCWP funds. Management type BMPs which are not cost-shared but for which technical advice will be given project participants shall be listed in the plan. A water quality plan is not required for that portion of a farm that does not include a critical area or source.

(c) The participant is responsible for compliance with all applicable Federal, State, and local laws including those relating to the environment, in installing BMPs to solve the nonpoint source water quality problems.

(d) Time schedules for implementing BMPs are to be provided in the participant's water quality plan.

(e) The SCS or its designee shall make an annual status review to assure the technical adequacy of the implementation of the water quality plan.

§ 700.24 Cost-sharing.

(a) The maximum cost-share for each project will be approved by the Secretary, taking into consideration the recommendation of the NCC. The Federal cost-share for each BMP shall not exceed 75 percent of the cost of carrying out the practice unless otherwise approved by the Administrator, ASCS.

(b) The combined cost-sharing by Federal, State, or Subdivision thereof shall not exceed 100% of the cost of carrying out the BMP.

(c) The County ASC Committee(s) in consultation with the LCC will annually set maximum individual BMP cost-share rates for the project area.

(d) BMPs to be cost shared must have a positive effect on water quality.

(e) Cost sharing is not to be made available for measures installed primarily for:

(1) Bringing additional land into crop production.

(2) Increasing production on existing crop land.

(3) Flood protection.

(4) Structural measures authorized for installation under Pub. L. 83-566, Watershed Protection and Flood Prevention Act.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.25 RCWP contract.

(a) In order to participate in the RCWP, each landowner, operator, or person who controls or shares in the control of a tract of land on which one or more of the BMP's will be performed must execute the RCWP contract in which they agree to carry out the water quality plan.

(b) The participant must furnish satisfactory evidence of his or her control of the tract of land on which one or more of the BMP's will be performed.

(c) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the County ASC Committee.

(d) RCWP contracts shall include the basic contract document, the participant's water-quality plan, schedule of operations, and special provisions as needed.

(e) Technical assistance will be provided to participants to develop the water quality plan and to install BMPs.

(f) SCS or its designee shall approve the technical adequacy of the Water Quality Plan.

(g) Participants shall install BMPs according to the specifications that are applicable at the time the contract is signed or the measures are installed.

(h) The contract period is to be not less than 3 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(i) BMPs are to be maintained by the participant at no cost to the RCWP.

(j) All BMPs in the water-quality plan shall be maintained for the established life span of the BMP.

(k) The County ASC Committee in consultation with the LCC shall establish a BMP life span for each BMP offered in the approved project area. Each BMP cost-shared shall have a life span of at least 5 years, unless otherwise approved by the Administrator, ASCS.

(l) A participant may enter into a pooling agreement with other participants to solve mutual water quality problems.

(m) Participants are responsible for:

(1) Accomplishing the water quality plan.

(2) Obtaining and maintaining any required permits and easements necessary to perform the planned work.

(3) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications.

(4) The operation and maintenance of BMPs installed during the contract period.

(5) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(n) Unless otherwise approved by the NCC, the County ASC Committees shall not enter into any new RCWP contracts after five (5) years from the date when RCWP funds are first made available to the project.

(Pub. L. 96-108, 98 Stat. 821, 835 and Pub. L. 96-528, 94 Stat. 3095, 3111)

[45 FR 14009, Mar. 4, 1980, as amended at 48 FR 42803, Sept. 20, 1983]

§ 700.26 Contract modifications.

(a) The County ASC Committee by mutual agreement with the landowner or operator, may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, and/or water quality programs.

(b) Requirements of active contracts may be modified by the County ASC Committee only if such modifications are specifically provided for in these regulations. The concurrence of SCS or its designee and the CD are necessary when modifications involve a technical aspect of the participant's water quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

(c) Contracts may be modified when the participants add or delete land to the farm.

(d) Contracts may be modified to add, delete, or substitute BMPs when:

(1) The installed measure failed to achieve the desired results through no fault of the participant.

(2) The installed measure deteriorated because of conditions beyond the control of the participant.

(3) Another BMP will achieve the desired results.

(4) The extent of the BMP is changed.

(e) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion. Other time schedule revisions will require modification.

(f) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on that portion of the contract, the participant:

(1) Forfeits all right to any future cost-share payments on the transferred portion.

(2) Must refund all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except the payment may be retained where it is determined by the County ASC Committee after consultation with the technical agency and the CD, that the established BMPs will provide water quality benefits for the designed life of the BMP.

(g) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, may be made to the participant who applied the BMPs and had control prior to the transfer.

(2) The new land owner or operator is to assume all obligations of the previous participant with respect to the transferred land.

(3) The contract with the new participant is to remain in effect with the original terms and conditions, except that;

(4) The original contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the County ASC Committee, the provisions of paragraphs (f) (1) and (2) of this section apply.

§ 700.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal cost-share payments are to be made by the County ASC Committee upon certification by the District Conservationist, SCS, or designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum RCWP cost-share payment to a participant shall be limited to $50,000.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the County ASC Committee at the cost-share percentage specified in the project approval notice and by one of the following methods as set out in the contract:

(i) Average cost; or

(ii) Actual cost but not to exceed the average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the County ASC Committee for each project using cost data from the local area.

These costs shall be reviewed by the SCC for consistency with average costs in other USDA programs. These average costs shall be updated annually by the County ASC Committee in consultation with the LCC.

(e) *Application for payment.* Cost-share payments shall be made by the County ASC Committee after a participant has completed a BMP or an identifiable unit of a BMP and it is determined to meet standards and specifications. Application for payment must be submitted to the County ASC Committee, on the prescribed form and be supported by such cost receipts as are required by the County ASC Committee. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.* (1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the County ASC Committee, its representatives, or the Federal Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) Any person who may be entitled to any cost-share may assign rights thereto in accordance with regulations governing the assignments of payments. (31 U.S.C. 203, as amended, and 41 U.S.C. 15, as amended.)

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC Committee, the compensation due the participant must be used (set-off) to reduce that indebtedness. Indebtedness to USDA is to be given first consideration. Set-offs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved. (See 7 CFR Part 13.)

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* The County ASC Committee, the agency providing technical assistance or representatives thereof, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the applications or contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Ineligible payments.* The filing of requests for payment for BMPs not carried out, or for BMPs carried out in such a manner that they do not meet the contract specifications, constitutes a violation of the contract.

§ 700.28 Appeals.

(a) The applicant may, prior to execution of the contract, request that the County ASC Committee review or reconsider administrative criteria being used in developing his or her contract.

(1) The applicant shall make a written request to the County ASC Committee setting forth the basis for the appeal.

(2) The County ASC Committee shall have 30 days in which to make a decision and notify the applicant in writing.

(3) The decision of the County ASC Committee may be appealed to the State ASC Committee.

(4) The State ASC Committee decision shall be final.

(b) The applicant/participant may request and receive a review by the SCS State Conservationist of criteria used in developing the water quality plan or BMP specifications.

(c) After the contract has been executed, the participant may request and receive a review of administrative procedures under the ASCS appeals procedures set out in 7 CFR Part 780.

§ 700.29 Contract violations.

(a) The following actions constitute a violation of the RCWP contract by a participant:

(1) Knowingly or negligently damaging or causing BMPs to become impaired.

(2) Failing to comply with the terms of the contract.

(3) Filing a false claim.

(4) Misusing conservation materials or services.

(5) Adopting a land use or practice during the contract period which tends to defeat the purposes of the program.

(b) *Contract termination as a result of violations.* (1) The participant agrees to forfeit all rights to further cost-sharing payments under a contract and to refund all cost-share payments received if the County ASC Committee with the concurrence of the State ASC Committee, determines that:

(i) There was a violation of the contract during the time the participant had control of the land.

(ii) The violation was of such a nature as to warrant termination of the contract.

(2) The participant shall be obligated to refund all cost-share payments, including those paid to vendors for materials and services.

(c) *Payment adjustments and refunds resulting from violations.* (1) The participant agrees to refund cost-share payments received under the contract or to accept payment adjustments if the County ASC Committee determines and the State ASC Committee concurs that:

(i) There was a violation of the contract during the time the participant had control of the land.

(ii) The nature of the violation does not warrant termination of the contract.

(2) Payment adjustments may include decreasing the rate of the cost share, or deleting from the contract a cost-share commitment, or withholding cost-share payments earned but not paid. The participant who signs the contract may be obligated to refund cost-share payments.

Subpart D—Monitoring and Evaluation

§ 700.40 General program monitoring and evaluation.

(a) *Requirement.* All approved RCWP projects will be monitored in sufficient detail to determine BMP application progress and to generally document water quality improvement trends through the life of the project. This will include, among others, data on BMP installation progress, payments made, refunds and periodic water quality monitoring for addressing short and long-term trends in water quality.

(b) *Monitoring Report.* A water quality monitoring report will be submitted as a part of the annual progress report. The initial report will include:

(1) A description of water quality monitoring strategy for the area.

(2) Data collection schedule.

(3) Parameters being monitored (and baseline values).

(4) Collection and analytical methods.

(5) A summary of existing data and trends.

Subsequent reports will update the initial data and report any significant changes in water quality land use.

(c) *Program Monitoring Funding.* The project application and the proposed monitoring plan are to include an estimate of the local and State financial and technical support. General monitoring will not be financed with RCWP funds.

§ 700.41 Comprehensive USDA/EPA joint project water quality monitoring, evaluation, and analysis.

(a) *Requirement.* The Secretary and Administrator, EPA will jointly select a limited number of projects to be comprehensively monitored and evaluated from a list of projects recommended by the NCC. The NCC will develop criteria for selecting the project areas.

(b) *Project Selection.* The NCC will recommend projects for this comprehensive program. The project areas are to be representative of the agricultural and silvicultural nonpoint source pollution problems.

(c) *Plan Development.* After a project is selected for the comprehensive monitoring and evaluation, the SCC is to submit within 90 days, a plan for USDA-EPA review and approval. USDA and EPA will have 30 days for the plan review and approval process.

(d) *Plan Requirements.* In general, the comprehensive monitoring plan will address and include the following:

(1) *Objective.* Define the purpose and scope of the monitoring program and establish clear objectives for each activity proposed.

(2) *Monitoring Strategy.* Define the basic hydrological and meteorological factors within the proposed RCWP project area and identify the strategy and parameters to be used to identify the changes in water quality attributable to the installation of BMPs. Wherever possible, identify and quantify changes in land use, land use patterns and farming practices that will affect the quantity, quality or timing of nonpoint source pollutants reaching an aquatic system and detail information as to number and location of sampling stations and the frequency of sample collection.

(3) *Socioeconomic Impacts.* Identify the positive and negative impacts on the landowners in the project area and estimate the community or off-site benefits expected of the project if completed as planned.

(4) *Institutional Aspects.* Identify and clearly define the role and responsibility for each participating agency including, where appropriate fiscal and manpower commitments.

(5) *Educational Aspects.* Clearly define the approache(s) to be used to inform and educate individual landowners. Include procedures for periodic evaluation of this effort so the midcourse corrections can be made if needed.

(6) *Quality Assurance.* To insure that the data collected is usable to make National projections, a quality assurance program must be included that is consistent with that of the EPA Region within which the project is located.

(7) *Data Storage.* The data collected on comprehensive monitoring projects must be available to USDA and EPA RCWP user groups.

(e) *Reporting.* Reports for these projects are to be made at least annually to the NCC based on guidance sent to the SCC by the Administrator, ASCS.

(f) *Funding.* Funding for the comprehensive monitoring will be provided from RCWP funds and other authorizations.

§ 700.42 Program evaluation.

(a) The RCWP will be evaluated annually by the USDA. The evaluation will be based on the reports provided in these regulations and on special studies undertaken by USDA or EPA as part of the RCWP program.

(b) The USDA Deputy Under Secretary for International Affairs and Commodity Program will have the responsibility for coordinating the program evaluation and preparing an annual report for transmittal to the Secretary of Agriculture and the Administrator of EPA. The Deputy Assistant Secretary for Natural Resources and the Director of Economics, Policy Analysis and Budget, USDA, and the Assistant Administrator for Water and Waste Management, EPA will assist in this effort.

§ 700.43 Public benefits when installing BMP's.

All BPM's implemented under this program shall be in compliance with regulations promulgated under Part 799 on environmental quality and related environmental concerns or similar regulations issued by a technical agency. Persons responsible for any aspect of performing BMPs shall carry out their responsibilities in such a way as to promote public benefits:

(a) By improving or preserving environmental quality and ecological balance.

(b) By preventing or abating pollution and other environmental degradation.

(c) Benefiting the community by means such as preserving open space or enhancing the appearance of the area.

(d) Benefiting wildlife and other desirable life forms.

(e) Preserving historic, archaeological, or scenic sites, wetlands, ecologically critical areas and prime farmland.

(f) Avoiding the creation of hazards to persons or animals.

(g) Avoiding actions that may adversely affect an endangered or threatened species and flood plains.

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SOURCE: 45 FR 49522, July 25, 1980, unless otherwise noted.

§ 701.1 Background.

(a) Through the conservation and environmental programs administered by the Department of Agriculture, the Federal Government will share with farmers, ranchers, and other eligible private landowners in the United States and the applicable territories and possessions of the United States, the cost of carrying out:

(1) Approved soil and water conservation and pollution abatement practices, including related wildlife conservation practices.

(2) Approved forestry practices.

(3) Emergency conservation measures, in accordance with the provisions of this part and such modificaitons there of as may hereafter be made.

(b) Cost-sharing may be made available to eligible program participants by the Agricultural Stabilization and Conservation Service for:

(1) Soil and water conservation and pollution abatement practices under the Agricultural Conservation Program.

(2) Forestry practices under the Agricultural Conservation Program or Forestry Incentives Program.

(3) Practices to correct damage to land or conservation practices caused by natural disaster under the Emergency Conservation Program.

(4) Installation of water conservation measures under the Emergency Conservation Program during periods of severe drought.

(c) Information on the practices for which costs will be shared, the exact specifications and rates of cost-sharing for such practices, and the eligibility requirements for participating in the programs, may be obtained from the Agricultural Stabilization and Conservation county committee (hereinafter referred to as "county committee") for the county in which the farm, ranch or other eligible land is located or from the Agricultural Stabilization and Conservation State committee (hereinafter referred to as "State committee"), for the State in which such county is located.

§ 701.2 Definitions.

(a) "County conservation review group" consists of the county committee; the county extension agent; a representative of the Soil Conservation Service; a representative of the U.S. Forest Service; a representative of the Farmers Home Administration; a representative of the State forestry agency or its equivalent, when the representative accepts an invitation to be a member of the group; and a representative of the conservation district in the county, where the governing board of the district accepts an invitation to designate a representative (if there is more than one district in the county, the governing boards of the districts may jointly designate only one person to represent all of the districts). The county conservation review group shall have the responsibilities as provided for in §§ 701.10 and 701.35.

(b) "Farm" or "ranch" means that area of land considered as a farm under the regulations governing reconstitution of farms, allotments, and bases, Part 719 of this chapter, as amended, and, for the forestry incentives program, "farm" or "ranch" means eligible land (or ownership tracts) as provided in § 701.30.

(c) "National conservation review group" consists of representatives of the Agricultural Stablization and Conservation Service; Soil Conservation Service; U.S. Forest Service; Science and Education Administration; Economics, Statistics, and Cooperatives Service; Farmers Home Administration; Office of the General Counsel, U.S. Department of Agriculture; Office of Budget Planning and Evaluation, U.S. Department of Agriculture; Environmental Protection Agency; and Office of Management and Budget. The national conservation review group is responsible for recommending changes in program administrative procedures and policy guidelines, and evaluations of program effectiveness and operating arrangements.

(d) "Program year" means the Federal fiscal year for accounting purposes.

(e) "State" means any one of the United States, Puerto Rico, the Virgin Islands, and in the case of Forestry Incentives Program includes Guam, the American Samoa, the Commonwealth of the Northern Marianas Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

(f) "State conservation review group" consists of the State committee, the State Director of Extension; the State Conservationist of the Soil Conservation Service; a representative of the U.S. Forest Service; a representative of the Farmers Home Administration; a representative of the State forestry agency, or its equivalent, when the representative accepts an invitation to be a member of the group; a representative of the State Soil Conservation Committee, or its equivalent, when the representative accepts an invitation to be a member of the group; and a representative of the State Water Quality Agency, or its equivalent when it accepts an invitation to be a member of the group. The State conservation review group has the responsibility provided for in § 701.11.

(g) "State forestry committee," or its equivalent, consists of the State forester or equivalent State official, who serves as chairperson; and a head or representative at the State level of the following USDA agencies: Agricultural Stabilization and Conservation Service; U.S. Forest Service; Science and Education Administration; Farmers Home Administration; Soil Conservation Service. At the discretion of the committee, State and local interests may also be involved. The function of the State forestry committee is to coordinate forestry budget proposals, agency roles in education, technical assistance, technology transfers, and forestry incentives.

(h) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context or subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, Part 719 of this chapter, as amended.

[45 FR 49522, July 25, 1980, as amended at 47 FR 46998, Oct. 22, 1982]

Subpart—Agricultural Conservation Program

§ 701.3 Program objective.

(a) The objective of the Agricultural Conservation Program (hereinafter referred to in this subpart as the "program") is to assure the continued supply of food and fiber necessary for the maintenance of a strong and healthy people and economy, and to provide for environmental conservation or enhancement.

(b) This will be accomplished through a program that has been formulated and is to be carried out, taking into consideration:

(1) The need to control erosion and sedimentation from agricultural land and conserve the water resources on such land.

(2) The need to control pollution from animal wastes.

(3) The need to facilitate sound resource management systems through soil and water conservation.

(4) The need to encourage voluntary compliance by agricultural producers with Federal and State requirements to solve point and non-point sources of pollution.

(5) National priorities reflected in the National Environmental Policy Act of 1969 and other congressional and administrative actions.

(6) The degrees to which the measures contribute to the national objective of assuring a continuous supply of food and fiber necessary for the main-

tenance of a strong and healthy people and economy.

(7) The type of conservation measures needed to improve water quality in rural America.

(8) The types of conservation measures needed that have significant energy conserving benefits.

[45 FR 49522, July 25, 1980, as amended at 47 FR 939, Jan. 8, 1982]

§ 701.4 State funds.

Funds available for practices to be performed under the program will be distributed among the States in accordance with conservation needs as determined by the Secretary.

§ 701.5 County funds.

The State committee will allocate the funds available for practices among the counties within the State consistent with the program objective, and will give particular consideration to the furtherance of special projects, watershed conservation projects, resources conservation development projects, approved State water quality plans, and other conservation and pollution abatement projects sponsored by local people and organizations.

§ 701.6 Availability of funds.

(a) The provisions of the program are subject to such legislation as the Congress of the United States may hereafter enact; the paying of the cost-shares provided herein is contingent upon such appropriation as the Congress may provide for such purpose; and the amounts of such cost-shares will be within the limits finally determined by such appropriation.

(b) Funds available for the Agricultural Conservation Program may be made available as needed for practices to be performed under the Naval Stores Conservation Program, in accordance with instructions issued by the Deputy Administrator, State and County Operations.

§ 701.7 Eligible person.

An eligible person is a farmer or rancher who as an individual, partnership, association, corporation, estate, trust, or other business enterprise, or other legal entity (excluding districts which have taxing authority, Federal agencies, States and State agencies, but not excluding political subdivisions of a State) and, as an owner, landlord, tenant, or sharecropper, participates in the operation of a farm or ranch.

§ 701.8 Eligible land.

(a) The program is applicable to:

(1) Privately-owned lands;

(2) Land owned by a State or political subdivision of a State;

(3) Lands owned by corporations which are partly owned by the United States;

(4) Lands temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Administration, the U.S. Department of Defense, or by any other government agency designated by the Deputy Administrator, State and County Operations;

(5) Any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it;

(6) Indian lands, except that where grazing operations are carried out on Indian lands administered by the Department of the Interior, such lands are within the scope of the program only if covered by a written agreement approved by the Department of the Interior giving the operator an interest in the grazing and forage growing on the land and a right to occupy the land in order to carry out the grazing operations; and

(7) Noncropland owned by the United States on which practices are performed by private persons where such practices directly conserve or benefit nearby or adjoining privately-owned lands of the persons performing the practices and such persons maintain and use such federally-owned noncropland under agreement with the Federal agency having jurisdiction thereof.

(b) The program is not applicable to:

(1) Noncropland owned by the United States which was acquired or reserved for conservation purposes, or which is to be retained permanently

under Government ownership, including, but not limited to, grazing lands administered by the Forest Service of the U.S. Department of Agriculture, or by the Bureau of Land Management (including lands administered under the Taylor Grazing Act), or the Fish and Wildlife Service of the U.S. Department of the Interior, except as indicated in paragraph (a)(7) of this section.

(2) Nonprivate persons for performance of practices on any land owned by the United States or a corporation wholly owned by it.

§ 701.9 Conservation practices.

Conservation practices as specified by the Deputy Administrator, State and County Operations, ASCS, are made available nationally under the Agricultural Conservation Program and may be included in the State and county programs. Practices shall not be primarily production oriented or have little or no conservation or pollution abatement benefits. The practices are designed to be consistent with the agricultural conservation policy stated in section 7 of the Soil Conservation and Domestic Allotment Act, as amended, and national program policy, and are developed primarily to meet a definite need to accomplish one or more of the following:

(a) Establish long-lasting protective cover.

(b) Improve or sustain existing protective cover.

(c) Conserve or safely dispose of water.

(d) Benefit wildlife.

(e) Establish or improve stands of forest trees.

(f) Give protection against soil erosion.

(g) Prevent or abate agricultural-related pollution of water, land, and air.

(h) Meet special State or county conservation needs.

(i) Encourage energy conservation practices.

[45 FR 49522, July 25, 1980, as amended at 47 FR 939, Jan. 8, 1982]

§ 701.10 County programs.

(a) A program shall be developed in each county by the county committee, in consultation with the county conservation review group, in accordance with the National and State development guidelines and policies provided. At least one public meeting per year shall be held for this purpose.

(b) The county program shall be that approved by the State committee and the Secretary or designee.

[45 FR 49522, July 25, 1980, as amended at 47 FR 46998, Oct. 22, 1982]

§ 701.11 State programs.

(a) The State committee, in consultation with the State conservation review group, shall develop recommendations for the State program. The chairperson of the State conservation review group may also invite others with conservation or water quality interests to participate in such deliberations. At least one public meeting per year shall be held for this purpose.

(b) The State program shall consist of the guidelines and practices selected by the State committee after considering the recommendations submitted by the county committee to the State review group and approved by the Secretary or designee.

[45 FR 49522, July 25, 1980, as amended at 47 FR 46999, Oct. 22, 1982]

§ 701.12 Selection of practices.

The practices to be included in the State or county program shall be only those practices for which cost-sharing is essential to permit accomplishment of the program objective.

§ 701.13 Levels and rates of cost-sharing.

(a) The maximum level of cost-sharing for each practice shall be the percentage of the average cost of performing the practice considered necessary to obtain the needed performance of the practice, but at a level such that the participant will make a significant contribution to the cost of performing the practice.

(b) Levels of cost-sharing under annual agreements for each practice shall not be in excess of 75 percent of the average cost of carrying out the practice as determined by the county committee. However, where the Deputy Administrator, State and County Operations, determines a higher level of cost-sharing is necessary to provide adequate incentive for producer to carry out a conservation practice, the Deputy Administrator, State and County Operations, may specifically authorize a higher level. (See § 701.19 for special provision for low-income farmers.)

(c) Levels of cost-sharing under long term agreements shall not be in excess of 75 percent nor less than 50 percent of the average cost for each practice as determined by the county committee.

(d) For the purpose of establishing rates of cost-sharing, the average cost of performing a practice may be the average cost for a county or a part of a county, as determined by the county committee.

[45 FR 49522, July 25, 1980, as amended at 47 FR 939, Jan. 8, 1982]

§ 701.14 Starting of practices.

Costs will not be shared for practices or components of practices that are started before a formal approval is given by the county committee.

[47 FR 939, Jan. 8, 1982]

§ 701.15 Method of approval.

The county committee will determine the extent to which Federal funds will be made available to share the cost of each approved practice, taking into consideration the county allocation, the conservation and environmental problems in the county, the land involved, and the practices for which requested cost-sharing is considered by the county committee as most needed. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the cost-share for the performance of that number of units of the practice. To the extent practicable, notices of approved practices shall be issued before performance of the practice is started. No practice may be approved for cost-sharing except as authorized by the county program, or in accordance with procedures incorporated therein. Available funds for cost-sharing shall not be allocated on a pro-rata basis, but shall be directed to the accomplishment of the most enduring benefits attainable.

(a) Cost-sharing may be approved under annual agreements or long-term agreements.

(b) Annual agreements may be approved in all counties. Long-term agreements are limited to farms or ranches which are within Soil Conservation Districts (or comparable districts) through which the Soil Conservation Service provides planning and technical services, except:

(1) Farms and ranches located within a county designated for the Great Plains Conservation Program are only eligible for long-term agreements that cover part of a farm. Long-term agreements that cover whole farms shall not be approved in these counties.

(2) Farms and ranches not located within a Soil Conservation District (or comparable district) may be eligible for a long-term agreement, provided conservation plans of operations are developed by the farmer or rancher in cooperation with the Soil Conservation Service and approved by an appropriate State official or, in cases where an appropriate State official is not available, approved by the Soil Conservation Service.

§ 701.16 Long-term agreements.

(a) The period of a long-term agreement will be for not less than three (3) program years nor more than ten (10) program years. The county committee and the signatories to the agreement in consultation with the Soil Conservation Service representative, will mutually determine the period of the agreement.

(b) The long-term agreement will be based on a conservation plan of operations for the farm or ranch or portion thereof which has been approved by the Soil Conservation District (or comparable district) or, for farms or ranches not located in a Soil Conservation District (or comparable district), by an appropriate State Official or the Soil Conservation Service, as applicable.

(c) The long-term agreement will provide that the farmer or rancher will carry out those measures in the conservation plan of operations which are determined to be essential to meeting the basic conservation needs of the farm or ranch, or portion thereof, whether or not cost-sharing is approved for such measures.

(d) The owner of the farm or ranch will be required to be a signatory to a long-term agreement, whether or not that person contributes to the cost of approved practices thereon.

(e) Any signatory to a long-term agreement who is not an owner of the farm or ranch must provide assurance of control of the land for the duration of the period of the agreement.

(f) The level of cost-sharing, as provided in § 701.13, in effect for practices in all years of a long-term agreement shall be the level in effect for the beginning year of the agreement. The rate of cost-sharing for payment purposes for such practice will be based on the average cost of performing the practice at the time the practice is performed.

(g) A long-term agreement may be cancelled for failure to comply with the terms of the agreement if, after consulting with the Soil Conservation District (or comparable district) board or, if none exists, with a representative of the Soil Conservation Service, the county committee and State committee find that the seriousness of the irregularities warrant such action. If the agreement is cancelled, the signatories to the agreement are jointly and severally responsible for refunding all cost-shares paid and will forfeit all rights to further payments under the agreement. In such a case, no other refund or forfeiture provisions of these regulations apply.

(h) A long-term agreement may be revised in accordance with instructions issued by the Deputy Administrator, State and County Operations, by mutual agreement between the signatories to the agreement and the county committee based on approved changes in the Conservation plan of operations for the farm or ranch.

(i) An eligible person who acquires control of land under an approved agreement may elect to become a successor in interest under such agreement.

(j) An agreement will be terminated with respect to land for which loss of control has occurred and where the person acquiring control of such land elects not to become a successor in interest under the agreement. If the loss of control is for reasons beyond the control of the signatories to the agreement, the county committee will determine whether or not any cost-shares previously paid shall be refunded, but in no event shall the refund be greater than would be required in cases where loss of control is voluntary. If the loss of control is voluntary on the part of the signatories to the agreement, the signatories will be jointly and severally responsible for refunding all cost-shares paid and will forfeit all rights to further payments, with respect to the land for which control is lost. However, a refund will not be required for cost-shares where, the county committee and the State committee determine, after consulting with a representative of the Soil Conservation Service, that failure to perform the remaining practices in the agreement will not impair the effectiveness of the practices which have been performed and that the completed practices have provided conservation benefits consistent with the cost-shares which have been paid.

(k) An agreement may be terminated by the county committee, after considering the recommendation of the Soil Conservation District (or comparable district) board or, if none exists, with a representative of the Soil Conservation Service, if such action is in the public interest. The county committee will determine the amount of cost-shares previously paid that shall be refunded.

(l) An agreement may be terminated by the county committee upon the written request of the participant(s) to an agreement where no cost-shares have been paid for any of the scheduled practices and where the participant(s) does(do) not intend to perform any of the scheduled practices.

§ 701.17 Replacement, enlargement, or restoration.

The establishment or installation of a practice, for the purposes of the program shall be deemed to include the replacement, enlargement, or restoration of a practice for which cost-sharing has been allowed if the practice has served for its normal lifespan, or if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to solve the problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The county committee believes that the replacement, enlargement or restoration of the practice merits consideration under the program to an equal extent with other practices.

§ 701.18 Pooling agreements.

Farmers, ranchers, or eligible landowners in any local area may agree in writing, with the approval of the county committee, to perform designated practices which, by conserving or improving resources of the community, will solve a mutual conservation, pollution, or other environmental problem on the land of the participants. For purposes of eligibility for cost-sharing, practices carried out under such an approved written agreement shall be regarded as having been carried out on the land of the persons who performed the practices.

§ 701.19 Special provisions for low-income farmers and ranchers.

(a) Except as otherwise provided in § 701.13(c), the county committee may approve, in the case of low-income farmers and ranchers as defined in this section, level of cost-sharing of up to 80 percent of the average cost of performing practices.

(b) A low-income farmer or rancher is one who, as determined by the county committee, is a small producer whose livelihood is largely dependent on the farm or ranch and whose prospective income and financial resources for the current year are such that the farmer or rancher could not reasonably be expected to perform needed conservation practices at levels of cost-sharing applicable to other persons in the county.

(c) In approving requests for cost-sharing the county committee shall give special consideration to requests filed by low-income farmers and ranchers.

[45 FR 49522, July 25, 1980, as amended at 47 FR 939, Jan. 8, 1982]

§ 701.20 Encumbering land.

In order to receive cost-share assistance for a conservation practice in a Salinity Control Project area, a person participating in the program shall agree, as a condition of eligibility to receive such assistance, that a recordable encumbrance may be filed by ASCS with respect to the land on which the conservation practice is installed. Such encumbrance shall reflect the amount of the cost-share assistance which is received by the program participant for the practice and shall continue until such time as the established lifespan for the practice has expired. Notwithstanding the foregoing, this requirement may be waived by the county committee if such committee determines, with the concurrence of the State committee and after consultation with appropriate Federal, State and local authorities, that the land will not likely be converted to a nonagricultural use within the next five years.

[48 FR 33847, July 26, 1983 and 49 FR 1175, Jan. 10, 1984]

§§ 701.21—701.22 [Reserved]

§ 701.23 Maximum cost-share limitation.

For each program year, the total of all cost-shares to any person with respect to farms and ranches (§ 701.2(b)) in the United States, Puerto Rico, and the Virgin Islands, for approved practices which are not carried out under pooling agreements shall not exceed the sum of $3,500 and the total cost-sharing paid for approved practices including those carried out under pooling agreements shall not exceed the sum of $10,000. (Also see § 701.73.)

§ 701.24 Completion of practices.

Cost-sharing for the practices contained in this part is conditioned upon the performance of the practice in accordance with all applicable specifications and program provisions.

§ 701.25 Time of filing payment application.

Payment of cost-shares will be made only upon application submitted on the prescribed form to the county office by a date established by the county committee. Any application for payment may be rejected if any form or information required of the applicant is not submitted to county office within the applicable time limit.

§ 701.26 Other program provisions.

Other provisions as contained in §§ 701.1 and 701.2 and in the subpart, General Provisions, apply to the Agricultural Conservation Program.

Subpart—Forestry Incentives Program

§ 701.27 Program objective.

The objective of the Forestry Incentives Program (hereinafter referred to in this subpart as the "program") is to help assure a future supply of timber. This will be accomplished by encouraging landowners to apply forestry practices for the following:

(a) Production of softwood and hardwood timber and other forest-resources associated therewith to increase afforestation of suitable open lands.

(b) Reforestation of cutover and understocked forest lands.

(c) Timber stand improvement.

(d) Intensive multipurpose management.

(e) Protection of forest resources.

§ 701.28 [Reserved]

§ 701.29 Designated counties.

The State committee in consultation with the State Forester, will designate the counties or parts of counties in which the program will be operated. The following will be considered in making the selections:

(a) The total acreage in the county devoted to desirable types of softwood and hardwood timber.

(b) The estimated area in the county that is under eligible ownership.

(c) The estimated acreage suitable for the production of forest products.

(d) The availability of funds.

(e) The enhancement of other forest resources.

§ 701.30 Eligible person, land and ownerships.

(a) An eligible person is a private individual, group, Indian Tribe or other native group, association, corporation excluding corporations whose stocks are publicly traded, or other legal entity which owns eligible land. Firms principally engaged in the manufacture of wood products are not eligible. However, forest landowners who manufacture forest products on a part-time or irregular basis, are eligible.

(b) Eligible land is "nonindustrial" private forest land capable of producing at least 50 cubic feet of wood per acre per year.

(c) Eligible farms are those not exceeding a total of 1,000 acres of eligible private nonindustrial forest land in the United States or any commonwealth, territory or possession of the United States. The State Committee with the concurrence of the State Forester may approve cost-sharing with landowners owning more than 1,000 but not more than 5,000 acres of eligible forest land where it is deemed to be to the public's significant benefit.

(d) Significant public benefits are primarily those resulting from cost-effective timber production, with related benefits to aesthetics, recreation, other resource values, watershed protection and erosion reduction.

§ 701.31 Program funds.

(a) *State and counties.* Each designated State and county will receive a share of the funds provided nationally for the program. Funds will be distributed on the basis of the forest production opportunities in each State, considering the acreage of private nonindustrial forest lands, the number of eligible owners, the potential productivity of such lands and the need for reforestation, timber stand improvement, other forestry management needs, and the enhancement of other forest resources. The Director, Conservation and Environmental Protection

Division, ASCS, will allocate funds after consultation with representatives of the U.S. Forest Service and a committee of not less than five State foresters or equivalent State officials selected by a majority of the State foresters or equivalent State officials. The State committee will consult with the State forester when determining the allocation of such funds to the designated counties.

(b) A limitation on the amount of funds which may be obligated under long-term agreements shall be established by the State committee in accordance with guidelines provided by the Deputy Administrator, State and County Operations.

§ 701.32 Eligible practices and cost-share requirements.

(a) Cost-sharing may be available for the following National practices and authority:

(1) *Practice FP1.* Planting Trees.

(2) *Practice FP2.* Improving a Stand of Forest Trees.

(3) *Practice authority—SF Practice.* Special Forestry Practices. The Director, Conservation and Environmental Protection Division, ASCS, after consultation with the Forest Service, may approve special forestry practices needed to solve a significant and unique local condition for which the National practices are not adequate. Such practices may be approved for inclusion in a county program after consultation with the program development group, and the recommendation of the county committee, the service forester, the State committee and the State forester.

(b) A forest management plan is required as a condition of cost-sharing. The plan will be developed in consultation with the landowner, approved by the service forester, and will contain information for accurate evaluation of practice effectiveness. The participant will be required to perform those measures in the plan which are essential to the effectiveness of the practice for which costs are shared. In the development of the plan, consideration will be given to wildlife, watershed protection, recreation, erosion control, aesthetics, and other associated forest resources values as well as cost-effective timber production.

§ 701.33 The National program.

The National program is based on recommendations developed by the Director, Conservation and Environmental Protection Division, ASCS, in consultation with representatives of the U.S. Forest Service and the committee of State foresters provided for in § 701.31.

§ 701.34 Development of State programs.

(a) A State program shall be developed in each State in accordance with the provisions contained in this part and in the National program and such modifications thereof as may thereafter be made. The program shall be developed by the State forestry committee as provided in § 701.2.

(b) The program for the State shall be that recommended by the State committee and State forester and approved by the Director, Conservation and Environmental Protection Division, ASCS, after consulting the U.S. Forest Service.

§ 701.35 Development of county programs.

(a) A county program shall be developed in each designated county in accordance with the provisions of the State program and such modifications thereof as may be made. The county program shall be developed by the county conservation review group. The county conservation review group, working with the governing body of the conservation district, the State forestry agency representatives, the county supervisor of the Farmers Home Administration, and others with conservation and environmental interest, shall develop recommendations for the county program.

(b) The program for the county shall be that recommended by the county committee and service forester and approved by the State committee and State forester.

[45 FR 49522, July 25, 1980, as amended at 47 FR 46999, Oct. 22, 1982]

§ 701.36 Adaptation of practices.

(a) The practices included in the State program meet the conditions and requirements of the National program. National program provisions may be modified or deleted to make practices more restrictive where such changes meet the objectives of the program.

(b) The practices included in the county program must meet the conditions and requirements of the State program. State program provisions may be modified or deleted to make practices more restrictive where such changes will still result in the practices effectively meeting the objectives of the program.

§ 701.37 Levels and rates of cost-sharing.

(a) The maximum cost-share for each practice shall be the percentage of the actual cost of performing the practice considered necessary to obtain the needed performance of the practice, but which will be such that the participant will make a significant contribution to the cost of performing the practice.

(b) Levels of cost-sharing shall be approved by the State ASC committee and shall not be in excess of 65 percent of actual costs incurred by the landowners.

(c) For the purpose of establishing rates of cost-sharing, the average cost of performing a practice may be the average cost for a State, a county or a part of a county, as determined by the State committee.

(d) The rates of cost-sharing for practices included in the county program may be lower than the rates approved for general use in the State.

[45 FR 49522, July 25, 1980, as amended at 47 FR 20109, May 11, 1982]

§ 701.38 Prior approval for cost-sharing.

Costs will be shared only for those practices, or components of practices, for which cost-sharing is requested and approval issued before performance thereof is started.

§ 701.39 Methods of approval.

The county committee will determine the extent to which Federal funds will be made available to share the cost of each approved practice. Approvals shall be made based on consideration of the county allocation, cost-effective opportunities for increasing timber production, potential for enhancing other forest resources, the forestry needs in the county, and the practices for which requested cost-sharing is considered by the county committee as most needed. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the cost-share for the performance of that number of units of the practice. Notices of appeared practices shall be issued before performance of the practice may be started. No practice may be approved for cost-sharing except as authorized by the National, State or county program, or in accordance with procedures incorporated therein. Available funds for cost-sharing shall not be allocated on a pro-rata basis, but shall be directed to the accomplishment of the most production attainable.

(a) Cost-sharing may be approved under annual agreements or long-term agreements.

(b) Land covered by a Great Plains Conservation Program contract is not excluded from an annual or long-term agreement if otherwise eligible and is approved by both the Forest Service and the Soil Conservation Service.

(c) The same practices, cost-share levels and general program provisions apply to both annual agreements and long-term agreements.

§ 701.40 Long-term agreements.

(a) The period of a long-term agreement will be for not less than three (3) years nor more than 10 (10) years. The county committee and the signatories to the agreement in consultation with the State forestry representative, will mutually determine the scheduling of essential practices and practice cost-sharing over the period of the agreement.

(b) The long-term agreement will be based on a forest management plan for the land which has been developed by the service forester.

(c) The long-term agreement will provide that the owner will carry out those measures in the forest management plan which are determined to be essential whether or not cost-sharing is approved for such measures.

(d) The level of cost-sharing in effect for practices in all years of a long-term agreement shall be the level in effect for the beginning year of the agreement. The rate of cost-sharing for payment purposes for such practice will be based on the average cost of performing the practice at the time the practice is performed.

(e) A long-term agreement may be canceled for failure to comply with the terms of the agreement if, after consulting with the service forester, the county committee and State committee find that the seriousness of the irregularities warrant such action. If the agreement is canceled, the signatories to the agreement are jointly and severally responsible for refunding all cost-shares paid and will forfeit all rights to further payments under the agreement. In such a case no other refund or forfeiture provisions of these regulations apply.

(f) A long-term agreement may be revised in accordance with instructions issued by the Deputy Administrator, State and County Operations, where there is a change in status of the participants or the land under agreement.

(g) An eligible person who acquires control of land under an approved agreement may elect to become a successor in interest under such agreement.

(h) An agreement will be terminated with respect to land for which loss of control has occurred and where the person acquiring control of such land elects not to become a successor in interest under the agreement. If the loss of control is for reasons beyond the control of the signatories to the agreement, the county committee will determine whether or not any cost-shares previously paid shall be refunded, but in no event shall the refund be greater than would be required in cases where loss of control is voluntary. If the loss of control is voluntary on the part of the signatories, they will be jointly and severally responsible for refunding all cost-shares paid and will forfeit all rights to further payments, with respect to the land for which control is lost. A refund will not be required for cost-shares where, the county committee and the State committee determine, after consulting with the service forester, that failure to perform the remaining practices in the agreement will not impair the effectiveness of the practices which have been performed and that the completed practices will provide forestry benefits consistent with the cost-shares which have been paid.

(i) An agreement may be terminated if, after considering the recommendation of the service forester, the county committee recommends and the State committee concurs that such action is in the public interest.

§ 701.41 Restoration of practices.

(a) Cost-sharing may be authorized under the program only for the establishment or installation of the practices contained in this part. Cost-sharing may not be authorized for repeating any of the practices in this part with the same owner on the same acreage, except as provided in paragraph (b) or (c) of this section.

(b) Cost-sharing may be authorized for the replacement, enlargement, or restoration of practices for which cost-sharing has been allowed under the program only if all of the following conditions exist:

(1) Replacement or restoration of the practice is needed to solve the problem.

(2) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(3) The county committee believes that the replacement or restoration of the practice merits consideration under the program to an equal extent with other practices cost-shared.

(c) Cost-sharing may be authorized for timber stand improvement measures carried out in repetitive steps where, in the judgment of the service forester, the stand treatment warrants such silvicultural practice.

§ 701.42 Maximum cost-share limitations.

For each fiscal year the total of all cost-shares paid to any eligible person shall not exceed the sum of $10,000 with respect to eligible ownerships (§ 701.30(b)) in the United States or any commonwealth, territory or possessions of the United States for approved practices carried out under annual and/or long-term agreements.

§ 701.43 Completion of practice.

Cost-sharing for the practices contained in this subpart is conditioned upon the performance of the practices in accordance with all applicable specifications and program provisions.

§ 701.44 Time of filing payment application.

Payment of cost-shares will be made only upon application submitted on the prescribed form to the county office by the prescribed time limit or any authorized extension thereof. Any application for payment may be rejected if any form or information required of the applicant is not submitted to the county office within the applicable time limit.

§ 701.45 Other program provisions.

Other provisions as contained in §§ 701.1 and 701.2 and in the subpart, General Provisions, apply to the Forestry Incentives Program.

Subpart—Emergency Conservation Program

§ 701.46 Program objective.

The objective of the Emergency Conservation Program is to cost-share with eligible persons to rehabilitate farmlands damaged by wind and water erosion, floods, hurricanes, or other natural disasters and to provide water conservation or water enhancement measures during periods of severe drought.

§ 701.47 Program availability.

(a) The county committee may implement the program subject to the availability of funds where new conservation problems have been created on farmland by a natural disaster or wind erosion which, if not treated; will:

(1) Impair or endanger the land or water resource.

(2) Materially affects the productive capacity of the land or water resource.

(3) Represent damage which is unusual in character and, except for wind erosion, shall not be the type that would recur frequently in the same area.

(4) Be so costly to rehabilitate that Federal assistance is or will be required to return the land to productive agricultural use.

(b) Subject to the availability of funds, the county committee with the concurrence of the State committee and approval of the Deputy Administrator, State and County Operations may implement the program to carry out emergency water conservation and water enhancement measures during periods of severe drought.

§ 701.48 Eligibility of person and land.

Eligibility of person and land is the same as for the Agricultural Conservation Program as provided in §§ 701.7 and 701.8.

§ 701.49 Emergency conservation program practices.

(a) Except for severe drought and wind erosion, cost-sharing may be offered for emergency conservation practices only to replace or restore farmland to a condition similar to that existing prior to the natural disaster. Cost-sharing may not be offered for the solution of conservation problems existing prior to the disaster.

(b) Emergency Conservation Program practices for which cost-sharing may be authorized are generally:

(1) Removing debris from farmland.

(2) Grading, shaping, releveling or similar measures.

(3) Restoring permanent fences.

(4) Restoring structures and other installations.

(5) Emergency wind control measures.

(6) Drought emergency measures.

(7) Other emergency conservation measures.

§ 701.50 Practice approval.

Practices listed in § 701.49(b) (1) through (5) may be approved by the county committees. Practices (6) and (7) of § 701.49(b) must be approved by the Deputy Administrator, State and County Operations.

§ 701.51 Extent of cost-sharing.

(a) The maximum cost-share payment which may be made to any person by the Agricultural Stabilization and Conservation Service (ASCS) under the Emergency Conservation Program is limited to $200,000 per person, per disaster, including the amount of any payment received by such person as the result of the disaster under a pooling agreement.

(b) The levels of cost-sharing for which cost-share payments may be made by ASCS for each practice under the program shall be based upon the following:

(1) The producer must agree to pay for the first twenty percent of the cost of the practice to restore the loss.

(2) With respect to the remainder of the cost of completing the practice to restore the loss, the county committee shall establish levels of cost-sharing for which payments may be made by ASCS as follows:

(i) Not to exceed eighty percent of the first $50,000 of the cost of the practice(s) to restore the loss;

(ii) Not to exceed fifty percent for the next $50,000 of the cost of the practice(s) to restore the loss; and

(iii) Not to exceed twenty-five percent of the remaining cost of the practice(s) to restore the loss.

[47 FR 939, Jan. 8, 1982]

§ 701.52 Eligible costs.

Upon determination that a person is eligible for Emergency Conservation Program assistance, cost-sharing shall be granted for all reasonable costs incurred in the completion of the practice. Such costs may include personal labor, equipment, and other such costs which are determined by the county committee to be related to the costs of carrying out the practice. County committees shall limit costs for the use of personal equipment to an amount that reflects out-of-pocket expenses. Expenses for personal labor and personal equipment should be less than rates charged by contractors who expect to make a profit for their efforts.

§ 701.53 Filing requests.

The county committee shall establish a sign up period for filing cost-sharing requests immediately after the county committee's decision has been made (by the Deputy Administrator, State and County Operations, in cases of drought) to implement the Emergency Conservation Program in the county. Such periods should be at least 30 days in length. Late filed requests may be accepted by the county committee in justifiable cases.

§ 701.54 Approving requests.

County committees will issue practice approvals only when the requested practice has been determined eligible for cost-sharing assistance and the eligible person has indicated he/she is ready to start the practice.

§ 701.55 Pooling agreements.

Pooling agreements may be used on the same basis as provided for in the Agricultural Conservation Program in § 701.18.

§ 701.56 Payment approval.

The county committee is authorized to approve payments not to exceed $10,000 per person, per disaster. Cost-share assistance in excess of $10,000 must be approved by the Deputy Administrator, State and County Operations, or designee.

§ 701.57 Other program provisions.

Other provisions of this part as provided for in §§ 701.1 and 701.2 and in the subpart, General Provisions, apply to the Emergency Conservation Program.

Subpart—General Provisions

§ 701.58 Restriction on program eligibility.

The regulations in Part 796 of this chapter prohibiting the making of payments to program participants who harvest or knowingly permit to be harvested for illegal use, marijuana or other such prohibited drug-producing plants on any part of the land owned or controlled by them are applicable to these programs.

§ 701.59 Delegation of authority.

No delegation of authority contained in these programs to a State or county committee shall preclude the Deputy Administrator, State and County Operations or designee, from determining any question arising under these programs or from reversing or modifying any determination made by a State or county committee.

§ 701.60 Practice specifications.

(a) Minimum specifications that practices must meet to be eligible for cost-sharing shall be set forth in the county program, or incorporated therein by specific reference to a standard publication or other written document containing such specifications.

(b) Practice specifications shall represent those levels of performance which are needed in order for the practice to be effective in meeting the program objective and which are not in excess of levels for which cost-sharing can be justified.

§ 701.61 Responsibility for technical phases of practices.

The Soil Conservation Service and the U.S. Forest Service are responsible for technical phases of the practice as assigned and such assignment will be specified in State and county programs.

(a) The State conservationist of the Soil Conservation Service may utilize assistance from private, State or Federal agencies in carrying out the assigned responsibilities. No responsibilities will be assigned for counties when the Deputy Administrator, State and County Operations and the Administrator, SCS, determines that it would not be administratively practicable for the Soil Conservation Service to discharge such responsibilities. In such counties, these responsibilities shall be assumed by the county committees. The Soil Conservation Service may utilize to the fullest extent available resources of the State forestry agencies in carrying out assigned responsibilities for practices involving the establishment of wind-breaks or shelterbelts on farmland to prevent wind erosion.

(b) The U.S. Forest Service is responsible for the technical phases of practices or components of practices involving the planting of trees for forestry purposes and those involving the improving or protecting of a stand of forest trees, as specified in State and county programs. The U.S. Forest Service may utilize the assistance of private, State or Federal agencies in carrying out these assigned responsibilities, but services of State forestry agencies will be utilized to the extent that such services are available.

(c) The technical assistance to be furnished in servicing assigned practices will include, where appropriate, the following technical phases:

(1) Determining whether the practice is needed and practicable;

(2) Selecting the site (if necessary), complying with environmental and cultural regulations, determining the specific measures needed, and performing any required layout work for the practice;

(3) Supervising the installation of the practice if needed to assure conformity with specifications; and

(4) Certifying the extent performed and whether the specifications for the practice have been met. The technical agency shall perform all four phases for all assigned practices in State and county programs, except as may be provided in instructions issued by the Deputy Administrator, State and County Operations.

§ 701.62 Items of cost on which rates of cost-sharing may be based.

Except as otherwise provided by the specific ASCS procedural handbooks, notices, and regulations, the cost of any direct and significant factor in the performance of a practice may be considered in establishing the rate of cost-sharing for the practice.

§ 701.63 Handbook, bulletins, instructions, and forms.

The Deputy Administrator, State and County Operations is authorized to prepare and issue handbooks, bulletins, instructions, and forms, required in administering these programs. Copies of handbooks, bulletins, instructions and forms, containing detailed information on these programs as they apply to specific States, counties, areas, farms, ranches and other eligible ownerships, will be available in the office of the State committee and the office of the county committee.

§ 701.64 Opportunity for requesting cost-shares.

Farmers, ranchers, eligible landowners, or eligible persons, regardless of race, sex, religion, color, or national origin, shall be given an opportunity to request that the Federal Government share in the cost of those practices they consider to be needed on their farm, ranch, or other eligible land. The county committee shall direct the available funds for cost-sharing to those practices where cost-sharing is considered most essential to the accomplishment of the program objective.

§ 701.65 Repair, upkeep and maintenance of practices.

Cost-sharing is not authorized for repairs or for normal upkeep or maintenance of any practice.

§ 701.66 Public benefits when installing practices.

Persons responsible for any aspect of performing practices are to be encouraged to install the practices in such a way to promote public benefits by improving or preserving environmental quality and ecological balance by preventing or abating pollution and other environmental degradation; benefiting the community by such means as preserving open space, or enhancing the appearance of the area; benefiting wildlife and other desirable life forms; preserving historic, archeological, or scenic sites, wetlands, ecologically critical areas and prime farmlands; avoiding the creation of hazards to persons or animals and avoiding actions that may adversely affect an endangered or threatened species and flood plains.

§ 701.67 Payments for uncompleted practices.

Cost-shares approved under these programs will not be considered as earned until all components of the approved practice are completed in accordance with applicable specifications and program provisions. Cost-shares for completed components may be paid only on the condition that the farmers, ranchers, or eligible landowners, will complete the remaining components of the practice within the time prescribed by the county committee regardless of whether cost-sharing is offered for them, unless they are prevented from doing so because of reasons beyond their control.

§ 701.68 Practices involving the establishment or improvement of vegetative cover.

(a) Costs for practices involving the establishment or improvement of vegetative cover, including trees may be shared even though a good stand is not established, if the country committee determines, in accordance with standards approved by the State committee, that the practice was carried out in a manner which could normally result in the establishment of a good stand, and that failure to establish a good stand was due to weather or other conditions beyond the control of the operator. The county committee may require as a condition of cost-sharing in such cases that the area be reseeded or replanted or that other needed protective measures be carried out. Cost-sharing in such cases may be approved also for repeat applications of measures previously carried out or for additional eligible measures. Cost-sharing for such measures shall be approved to the extent such measures are needed to assure a good stand even though less than that required by the applicable practice wording for initial approvals.

(b) In the case of Foresty Incentives Program, replanting of trees is required where the landowner received cost-sharing for site preparation.

§ 701.69 Failure to meet minimum requirements or failure to comply fully with program provisions.

(a) Notwithstanding other provisions of these programs, costs may be shared for performance actually rendered even though the minimum requirements for a practice are not met, if the farmer, rancher, eligible landowner, or eligible person establishes to the satisfaction of the county committee and the county representative of any other agency having responsibility for technical phases of the practice that a reasonable effort was made to meet the minimum requirements and that the practice as performed adequately solves the problem.

(b) Nothwithstanding the provisions in paragraph (a) of this section, the terms and conditions of contracts entered into pursuant to programs in this part may be modified to grant relief when the Deputy Administrator, State and County Operations, determines that a person acting in good faith failed to fully comply with the program provisions.

§ 701.70 Practices carried out with aid from ineligible persons.

(a) Except for the Forestry Incentives Program, an eligible person shall be credited with the contribution of any ineligible person, including a State or Federal agency, for the purposes of determining the eligible person's total payment toward the practice. The cost-share payment made by ASCS to an eligible person shall not exceed the eligible person's actual contribution to the cost of carrying out the practice. Where authorized by the State committee, the county committee may reduce the cost-share payment made by ASCS to an eligible person where the cost-share plus the contribution of ineligible person equals the total cost of the practice.

(b) For the Forestry Incentives Program, aid from an ineligible person shall be deducted from the total cost of carrying out the practice before determining the cost-share to be credited to the eligible persons who contributed to the cost of the practice.

§ 701.71 Division of cost-shares.

(a) The cost-share for a practice shall be credited to the person who carried out the practice. If more than one person contributed to the carrying out of the practice, the cost-share for the practice shall be divided among those persons in the proportion that the county committee determines they contributed to the carrying out of the practice. In making this determination, the county committee shall take into consideration the value of the labor, equipment, or material contributed by each person toward the carrying out of the practice, and shall assume that each contributed equally unless the county committee is satisfied that their respective contributions were not in equal proportion. Any advances made by ASCS toward the cost of materials or services under § 701.21, the furnishing of land, and the furnishing of the right to use water, will not be considered as a contribution to the carrying out of any practice.

(b) The allowance by an eligible person of a credit to another eligible person in the form of an adjustment in rental, an exchange of cash, or other consideration, will not be considered as a contribution to the carrying out of any practice, unless the county committee is satisfied that such credit is directly related to the cost or cost-share of the practice. A person will not be considered as having contributed to the carrying out of a practice if the county committee determines that a person has been, or is to be, fully reimbursed for contributions made to the performance of the practice, through an adjustment in rental, an exchange of cash, or other consideration.

§ 701.72 Death, incompetency, or disappearance.

In case of death, incompetency, or disappearance of any person, any cost-shares due shall be paid to the successor, determined in accordance with provisions of the regulations in Part 707 of this chapter, as amended.

§ 701.73 Applying cost-share limitations.

(a) All or any part of cost-share which otherwise would be due any person for a program year may be withheld, or required to be refunded, if, with respect to that program year, the person has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust, or any other means, designed to evade a maximum cost-share limitation.

(b) For the purpose of applying the maximum cost-share limitations, the rules of paragraphs (b)(1) through (9) of this section shall apply in determining whether certain individuals who may have an interest in the ownership or operation of a farm or ranch (as provided in § 701.2(b)) are to be considered as one or as separate persons. In cases where more than one rule would appear to be applicable, the rule which is most restrictive as to number of persons shall apply.

(1) *Husband and Wife.* Husband and wife shall be considered as one person for all farms in which either has an interest except that a husband or wife shall be considered as separate persons with respect to any farm where all the conditions set forth in paragraph (b)(9) of this section are met.

(2) *Family groups.* Members of the same family shall be considered as one person for all farms in which any member has an interest except that any member shall be considered as a separate person with regard to any farm where all the conditions set forth in paragraph (b)(9) of this section are met.

(3) *Partnerships.* A partnership and its members shall be considered as one person for all farms in which the partnership or any member thereof has an interest except that partnership or any member thereof shall be considered a separate person with respect to any farm where all the conditions set forth in paragraph (b)(9) of this section are met. However, in no event shall cost-sharing be approved for both the partnership and the individual members thereof on the same farm.

(4) *Corporation.* A corporation (including a grazing association) and its shareholders or members shall be considered as one person for all farms in which the corporation or any shareholder or member has an interest except that the corporation or any shareholder or member thereof shall be considered a separate person with respect to any farm where all the conditions set forth in paragraph (b)(9) of this section are met. However, in no event shall cost-sharing be approved for both the corporation and the individual shareholders or members thereof on the same farm.

(5) *Trust.* The trustees of a trust and the beneficiaries of the trust shall be considered as one person on all farms in which the trustee or any beneficiary of the trust has an interest except that the trustee or any beneficiary of the trust shall be considered a separate person with respect to any farm where all the conditions of paragraph (b)(9) of this section are met. However, in no event shall cost-sharing be approved for both the trustee and the beneficiaries of the trust on the same farm.

(6) *Estates.* The administrator or executor of an estate and the heirs thereof shall be considered as one person on all farms in which the administrator or executor or any heir thereof has an interest except that the administrator or executor or any heir of the estate shall be considered as a separate person with respect to any farm where all the conditions of paragraph (b)(9) of this section are met. However, in no event shall cost-sharing be approved for both the administrator or executor and the heirs of the estate on the same farm.

(7) *Tenants in common and joint tenants.* All persons owning a farm as tenants in common or as joint tenants shall be considered as one person with respect to such farm except that the owners shall be considered separate persons if all the conditions set forth in paragraph (b)(9) of this section are met.

(8) *Joint undertakings.* Two or more individuals acting as a group under an arrangement which, although lacking in the legal elements of a corporation or partnership, is in the nature of a joint undertaking shall be considered as one person with respect to any farm to which the joint undertaking applies except that the joint undertaking or any member thereof shall be considered a separate person with respect to any farm where all the conditions set forth in paragraph (b)(9) of this section are met. However, in no event shall cost-sharing be approved for both the joint undertaking and the individual members thereof on the same farm.

(9) *Exception.* The conditions which must be met in order for an individual or other entity referred to in paragraph (b) (1), (2), (3), (4), (5), (6), (7), or (8) of this section to be considered a separate person are as follows:

(i) The interest of such individual or other entity in the farm and income therefrom must be separate and distinct from the interest therein of the other individuals or entity referred to in the applicable paragraph.

(ii) Such individual or other entity must exercise, separate from the other individuals or entity referred to in the applicable paragraph, responsibility for management of such separate interest.

(iii) The contribution of such individual or entity to the cost of performing practices must be made from a fund or account separate from that of any other individual or entity referred to in the applicable paragraph.

(c) For the purpose of applying the cost-share limitation, a corporation or partnership shall be considered as a separate person from any other corporation or partnership which may participate in the program, even though there are common stockholders or members, with respect to any farm where all of the following conditions are met:

(1) The interests of such corporation or partnership in the farm and the income therefrom must be separate and distinct from the interest therein of the other corporation or partnership.

(2) Such corporation or partnership must exercise, separate from the other corporation or partnership, responsibility for management of such separate interest.

(3) The contribution of such corporation or partnership to the cost of performing practices must be made from a fund or account separate from that of the other corporation or partnership. However, in no event shall cost-sharing be approved on the same farm for more than one corporation or partnership having common stockholders or membership.

§ 701.74 Persons eligible to file application for payment of cost-shares.

Any eligible person who bore a part of the cost of an approved practice is eligible to file an application for payment of cost-shares due.

§ 701.75 Time and manner of filing application and required information.

It shall be the responsibility of persons participating in these programs to submit to the county office forms and information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions. The time limits for submission of such forms and information shall be established where necessary for efficient administration of the programs. Such time limits shall afford a full and fair opportunity to those eligible to file the forms and information within the period prescribed. At least 2 weeks notice of any general time limits prescribed shall be given to the public. The notice shall be given by mailing notice to the office of each county committee and making copies available to the press. Other means of notification; including radio announcements and individual notices to person(s) affected, shall be used to the extent practicable. Notice of such time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the person(s) affected. Exceptions to the time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer or rancher.

§ 701.76 Appeals.

Any person may obtain reconsideration and review of determinations affecting participation in these programs, in accordance with Part 780 of this chapter, as amended.

§ 701.77 Performance based on advice or action of county or State committee.

Cases involving performance rendered in good faith in reliance upon action or advice of an authorized representative of a county or State committee shall be handled in accordance with Part 790 of this chapter.

§ 701.78 Compliance with regulatory measures.

Persons who carry out practices under these programs shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations. The person with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because such persons infringe on the rights of others or fail to comply with applicable laws or regulations.

§ 701.79 Maintenance and use of practice.

Each person receiving cost-share assistance under these programs is responsible for the maintenance and proper use of the practice. Each practice shall have an established lifespan or minimum period of time that it is expected to function as a conservation practice with proper maintenance. If it is determined that a practice has not been properly maintained for the established lifespan, the person receiving the cost-share assistance shall refund all or any part of such cost-share assistance as determined to be appropriate by the county committee. Further, any agreement providing for cost-share assistance will be terminated with respect to the land on which the practice is located if there is voluntary loss of control of the land by the person receiving the cost-share assistance and the person acquiring control of such land elects not to become a successor in interest to the agreement. If the agreement providing for cost-share assistance is terminated as a result of the voluntary loss of control of the land, each person receiving cost-share assistance under that agreement shall be liable for refunding to ASCS any cost-share assistance which has been received with respect to the practice. In addition, such person shall forfeit any right to receive any further cost-share assistance with respect to the land on which the practice is located.

[48 FR 33848, July 26, 1983]

§ 701.80 Actions defeating purpose of program.

If the county committee finds with the concurrence of the State committee, or if the State committee finds, that a person has taken any action which tends to defeat the purposes of these programs, it may withhold or require a refund of all or part of any of these program payments otherwise due or paid that person during the program year. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice carried out under a previous program year.

§ 701.81 Depriving others of cost-shares.

If the State committee finds that any person has employed any scheme or device to deprive any other person of cost-shares, it may impose a penalty. The State committee may withhold or require a refund of all or part of any of these program payments otherwise due or paid that person during the program year. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation.

§ 701.82 Filing of false claims.

If the State committee finds that any person has knowingly supplied false information or has knowingly filed a false claim, that person is ineligible for cost-sharing under the program year with respect to which information or claim is filed. False information or false claims include a claim for payment for a practice not carried out or for practices which do not meet the required specifications. Any amounts paid under these circumstances shall be refunded and any amounts otherwise due the person shall be withheld. The withholding or refunding of cost-shares will be in addition to any other penalty or liability otherwise imposed by law.

§ 701.83 Cost-shares not subject to claims.

Any cost-share or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations issued by the Secretary governing setoffs and withholdings, Part 13 of this title, as amended, shall be applicable to these programs.

§ 701.84 Assignments.

Any person who may be entitled to any cost-share under these programs may assign the right thereto, in whole or in part, in accordance with the regulations governing the assignment of payments at 7 CFR Part 709.

§ 701.85 Environmental considerations.

All actions implemented under the programs in this part shall be in compliance with regulations issued as Part 799—Environmental Quality and Related Environmental concerns which includes the procedures for complying with the National Environmental Policy Act, for Floodplain Management and Wetland Protection and for other environmental concerns.

PART 707—PAYMENTS DUE PERSONS WHO HAVE DIED, DISAPPEARED, OR HAVE BEEN DECLARED INCOMPETENT

Sec.
707.1 Applicability.
707.2 Definitions.
707.3 Death.
707.4 Disappearance.
707.5 Incompetency.
707.6 Death, disappearance, or incompetency of one eligible to apply for payment pursuant to the regulations in this part.
707.7 Form of application.

Authority: 54 Stat. 728, as amended, sec. 121, 70 Stat. 197, sec. 375, 52 Stat. 66, as amended, sec. 124(i), 75 Stat. 300, sec. 307(h), 76 Stat. 617, sec. 318, 76 Stat. 622, sec. 324(2), 76 Stat. 630, sec. 704, 68 Stat. 911, secs. 4, 8(b), 49 Stat. 164, 1149, as amended, sec. 101(4), 76 Stat. 606, sec. 3, 77 Stat. 45, sec. 4, 62 Stat. 1070; 5 U.S.C. 301, 7 U.S.C. 1334 note, 1339, 1375, 1379j, 1385, 1783, 1809; 16 U.S.C. 590d, 590h(b), 590(e), 590p(h), 15 U.S.C. 714b(d)(j)(k), unless otherwise noted.

Source: 30 FR 6246, May 5, 1965, unless otherwise noted.

§ 707.1 Applicability.

This part applies to all programs in Title 7 of the Code of Federal Regulations which are administered by the Agricultural Stabilization and Conservation Service under which payments are made to eligible program participants. This part also applies to all other programs to which this part is applicable by the individual program regulations.

[48 FR 35599, Aug. 5, 1983]

§ 707.2 Definitions.

"Person" when relating to one who dies, disappears, or becomes incompetent, prior to receiving payment, means a person who has earned a payment in whole or in part pursuant to any of the programs to which this part is applicable. "Children" shall include legally adopted children who shall be entitled to share in any payment in the same manner and to the same extent as legitimate children of natural parents. "Brother" or "sister", when relating to one who, pursuant to the regulations in this part, is eligible to apply for the payment which is due a person who dies, disappears, or becomes incompetent prior to the receipt of such payment, shall include brothers and sisters of the half blood who shall be considered the same as brothers and sisters of the whole blood. "Payment" means a payment by draft, check or certificate pursuant to any of the Programs to which this part is applicable. Payments shall not be considered received for the purposes of this part until such draft, check or certificate has been negotiated or used.

§ 707.3 Death.

(a) Where any person who is otherwise eligible to receive a payment dies before the payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, in accordance with the following order of precedence:

(1) To the administrator or executor of the deceased person's estate.

(2) To the surviving spouse, if there is no administrator or executor and none is expected to be appointed, or if an administrator or executor was appointed but the administration of the estate is closed (i) prior to application by the administrator or executor for such payment or (ii) prior to the time when a check, draft, or certificate issued for such payment to the administrator or executor is negotiated or used.

(3) If there is no surviving spouse, to the sons and daughters in equal shares. Children of a deceased son or daughter of a deceased person shall be entitled to their parent's share of the

payment, share and share alike. If there are no surviving direct descendents of a deceased son or daughter of such deceased person, the share of the payment which otherwise would have been made to such son or daughter shall be divided equally among the surviving sons and daughters of such deceased person and the estates of any deceased sons or daughters where there are surviving direct descendants.

(4) If there is no surviving spouse and no direct descendant, payment shall be made to the father and mother of the deceased person in equal shares, or the whole thereof to the surviving father or mother.

(5) If there is no surviving spouse, no direct descendant, and no surviving parent, payment shall be made to the brothers and sisters of the deceased person in equal shares. Children of a deceased brother or sister shall be entitled to their parent's share of the payment, share and share alike. If there are no surviving direct descendants of the deceased brother or sister of such deceased person, the share of the payment which otherwise would have been made to such brother or sister shall be divided equally among the surviving brothers and sisters of such deceased person and the estates of any deceased brothers or sisters where there are surviving direct descendants.

(6) If there is no surviving spouse, direct descendant, parent, or brothers or sisters or their descendants, the payment shall be made to the heirs-at-law in accordance with the law of the State of domicile of the deceased person.

(b) If any person who is entitled to payment under the above order of precedence is a minor, payment of his share shall be made to his legal guardian, but if no legal guardian has been appointed payment shall be made to his natural guardian or custodian for his benefit, unless the minor's share of the payment exceeds $1,000, in which event payment shall be made only to his legal guardian.

(c) Any payment which the deceased person could have received may be made jointly to the persons found to be entitled to such payment or shares thereof under this section or, pursuant to instructions issued by the Agricultural Stabilization and Conservation Service, a separate payment may be issued to each person entitled to share in such payment.

§ 707.4 Disappearance.

(a) In case any person otherwise eligible to receive payment disappears before receiving the payment, such payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to one of the following in the order mentioned:

(1) The conservator or liquidator of his estate, if one be duly appointed.

(2) The spouse.

(3) An adult son or daughter or grandchild for the benefit of his estate.

(4) The mother or father for the benefit of his estate.

(5) An adult brother or sister for the benefit of his estate.

(6) Such person as may be authorized under State law to receive payment for the benefit of his estate.

(b) A person shall be deemed to have disappeared if (1) he has been missing for a period of more than 3 months, (2) a diligent search has failed to reveal his whereabouts, and (3) such person has not communicated during such period with other persons who would be expected to have heard from him. Evidence of such disappearance must be presented to the county committee in the form of a statement executed by the person making the application for payment, setting forth the above facts, and must be substantiated by a statement from a disinterested person who was well acquainted with the person who has disappeared.

§ 707.5 Incompetency.

(a) Where any person who is otherwise eligible to receive a payment is adjudged incompetent by a court of competent jurisdiction before the payment is received, payment may be made, upon proper application therefor, without regard to claims of creditors other than the United States, to the guardian or committee legally appointed for such incompetent person. In case no guardian or committee has been appointed, payment, if not more than $1,000, may be made without regard to claims of creditors other than the United States, to one of the following in the order mentioned for the benefit of the incompetent person:

(1) The spouse.

(2) An adult son, daughter, or grandchild.

(3) The mother or father.

(4) An adult brother or sister.

(5) Such person as may be authorized under State law to receive payment for him (see standard procedure prescribed for the respective region).

(b) In case payment is more than $1,000, payment may be made only to such person as may be authorized under State law to receive payment for the incompetent.

§ 707.6 Death, disappearance, or incompetency of one eligible to apply for payment pursuant to the regulations in this part.

In case any person entitled to apply for a payment pursuant to the provisions of § 707.3, § 707.4, § 707.5, or this section, dies, disappears, or is adjudged incompetent, as the case may be, after he has applied for such payment but before the payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to the person next entitled thereto in accordance with the order of precedence set forth in § 707.3, § 707.4, or § 707.5, as the case may be.

§ 707.7 Form of application.

Persons desiring to claim payment in accordance with this Part 707 may do so on Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent". If the person who died, disappeared, or was declared incompetent did not apply for payment by filing the applicable program application for payment form, such program application for payment must also be filed in accordance with applicable regulations. If the payment is made under the Naval Stores Conservation Program, Part II of the Form ASCS-325 shall be executed by the local District Supervisor of the U.S. Forest Service. In connection with applications for payment under all other programs itemized in § 707.1, Forms ASCS-325, and program applications for payments where required, shall be filed with the ASCS county office where the person who earned the payment would have been required to file his application.

PART 708—RECORD RETENTION REQUIREMENTS—ALL PROGRAMS

§ 708.1 Record retention period.

For the purposes of the programs in this chapter, no receipt, invoice, or other record required to be retained by any agricultural producer as evidence tending to show performance of a practice under any such program needs to be retained by such producer more than two years following the close of the program year of the program.

(Sec. 4, 49 Stat. 164, secs. 7-17, 49 Stat. 1148, as amended; 16 U.S.C. 590d, 590g-590q)

[25 FR 105, Jan. 7, 1960. Redesignated at 26 FR 5788, June 29, 1961]

PART 709—ASSIGNMENT OF PAYMENT

Sec.
709.1 Basis, purpose, and applicability.
709.2 Definitions.
709.3 Purposes for which a payment may be assigned.
709.4 Execution of assignment form.
709.5 Interest; payment assigned not to be discounted.
709.6 Payment to the assignee.
709.7 Misrepresentations.
709.8 Liability of the Secretary or disbursing agents.

AUTHORITY: Sec. 8(g), 52 Stat. 35, as amended; 52 Stat. 205, 80 Stat. 1167; 16 U.S.C. 590h(g).

SOURCE: 32 FR 14921, Oct. 28, 1967, unless otherwise noted.

§ 709.1 Basis, purpose, and applicability.

The purpose of this part is to state the conditions under which a producer may assign his payment under (a) the Agricultural Conservation Program, Part 701 of this chapter, as amended; (b) the Naval Stores Conservation Program, Part 706 of this chapter, as amended; (c) the Upland Cotton Program, Part 722 of this chapter, as amended; and (d) any other program to which this part is made applicable by the individual program regulations.

§ 709.2 Definitions.

(a) "Assignor" means any producer who, in accordance with the provisions of this part, assigns the payment due him under any of the programs to which this part is applicable.

(b) "Assignee" means any person, including a Department, bureau, or agency of the Federal Government or any corporation whose stock is wholly owned by the Federal Government, who makes advances to a producer of cash, supplies, services, or land for the purpose of financing the making of a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year.

(c) "County office" means the office of the Agricultural Stabilization and Conservation Service for the county in which the assignor's farm is regarded as located for administrative purposes, except that in the case of the Naval Stores Conservation Program, "county office" means the office of the U.S. Forest Service, Valdosta, Ga.

(d) All other words and phrases in this part and in the instructions, forms, and documents in connection therewith, shall have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases, Part 719 of this chapter, as amended.

§ 709.3 Purposes for which a payment may be assigned.

(a) A payment which may be made to a producer under any program to which this part is applicable may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. No assignment may be made to secure or pay any preexisting indebtedness of any nature whatsoever.

(b) To finance making a crop means (1) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or (2) to provide food, clothing, and other necessities required by the producer or persons dependent upon him.

(c) Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a fixed commodity rent for a farm.

§ 709.4 Execution of assignment form.

(a) To be recognized by the United States, the assignment must be made in writing on Form ASCS-36, Assignment of Payment, and filed in the county office prior to the time the county committee approves the making of the payment covered by the assignment.

(b) The assignment shall be signed by both the assignor and the assignee. The assignor's signature shall be witnessed by a member of the county or community ASC committee for the county or community where the farm is located, or by an employee of the county committee. In the case of the Naval Stores Conservation Program, the witness shall be an inspector of the U.S. Forest Service or State forest agency. Notwithstanding any other provision of this paragraph, where the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, the assignment may be witnessed by a bonded officer of the lending institution.

(c) In executing Form ASCS-36, the assignor and the assignee shall agree to notify promptly the county office of any change affecting the assignment.

(d) If prior to the making of payment to the assignee, the assignor represents to the county committee that the indebtedness secured by the assignment has been paid in whole or in part, but that the assignee refuses to execute a new Form ASCS-36 or otherwise authorize a reduction in the amount of the payment assigned, the county committee shall, as soon as practicable, give notice to the assignee of the representations made by the assignor. If, after investigation and opportunity for the assignor and the assignee to be heard, the county committee finds that the indebtedness has been paid in whole or in part, the committee shall notify the assignee and the assignor of such finding, and thereafter such assignment, insofar as concerns the United States, shall be treated as effective only to the extent of the unpaid indebtedness.

§ 709.5 Interest; payment assigned not to be discounted.

(a) Where interest is charged on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located.

(b) The payment assigned shall not be discounted by charging the producer more than the current cash price for any supplies furnished or in any other manner whatsoever. This paragraph shall not be construed to prohibit the deducting of interest in advance from any cash advance.

§ 709.6 Payment to the assignee.

(a) Unless proof is furnished to the county office that the indebtedness secured by the assignment has been paid in full or otherwise discharged, the assignee shall be paid the smaller of the amount specified on Form ASCS-36 or the amount of the payment earned under the program covered by the assignment, less any indebtedness owing by the producer to the United States which may be setoff against the payment in accordance with the regulations issued by the Secretary governing setoffs and withholdings, Part 13 of this title, as amended.

(b) If the indebtedness secured by the assignment is paid in whole or in part without notice to the county office and payment is made to the assignee, the assignee shall receive the payment in trust to pay over promptly to the assignor, or refund to the county office for payment to the assignor, any amount by which the payment made to the assignee exceeds the unpaid indebtedness secured by the assignment.

§ 709.7 Misrepresentations.

If the county committee has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Form ASCS-36, the committee shall forthwith give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, the county committee finds that any material misrepresentation was in fact made, the committee shall notify the assignor and the assignee of such finding, and thereafter such assignment, insofar as concerns the United States, shall be treated as being void and of no effect.

§ 709.8 Liability of the Secretary or disbursing agents.

Neither the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

SUBCHAPTER B—FARM MARKETING QUOTAS, ACREAGE ALLOTMENTS, AND PRODUCTION ADJUSTMENT

PART 711—MARKETING QUOTA REVIEW REGULATIONS

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AUTHORITY: Secs. 301, 363-368, 371, 374, 375, 379, 52 Stat. 38, as amended, 63-66, amended, 79 Stat. 1211, as amended; 7 U.S.C. 1301, 1363-1368, 1371, 1374, 1375, 1379, unless otherwise noted.

SOURCE: 35 FR 15355, Oct. 2, 1970, unless otherwise noted.

GENERAL

§ 711.1 Effective date.

The Marketing Quota Review Regulations (26 FR 10204, 27 FR 4831, 6539, 28 FR 3913, 31 FR 4271, 5663, 32 FR 15704) shall remain in effect and shall apply to all actions and proceedings taken prior to October 15, 1970, and such regulations are superseded as of midnight, October 14, 1970. The provisions of §§ 711.1 to 711.50 are effective October 15, 1970.

§ 711.2 Expiration of time limitations.

The provisions of Part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

§ 711.3 Definitions.

(a) *General terms.* In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The definitions in Part 719 of this chapter shall apply to this part.

(b) *Act.* Act means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(c) *Applicant.* Applicant means the farmer who filed an application for review of a farm marketing quota and if a hearing involves the quota of a farm resulting from the reconstitution by division of a parent farm, the farm operator of each farm resulting from such reconstitution shall be considered an applicant for purposes of this part.

(d) *Clerk.* Clerk means the county executive director for the county in which the application for review is filed unless another employee of the county or State office is designated by the State executive director to serve as clerk to the review committee.

(e) *Review committee.* Review committee means three farmers designated to review a quota by the State executive director from the panel of farmers appointed by the Secretary under section 363 of the Act.

(f) *Quota.* Quota means the farm marketing quota established under the Act for a farm during a year in which quotas are approved in the national referendum for a commodity, including any of the following factors:

(1) Farm acreage allotment, farm marketing quota, and any adjustments in such allotment and quota resulting from: (i) Program violations; (ii) lease and transfer; (iii) sale and purchase; (iv) overmarketing and undermarketing; (v) release and reapportionment; (vi) eminent domain transactions; and (vii) forfeiture and reallocation.

(2) Farm preliminary yield, farm normal yield and farm yield.

(3) A determination of the land constituting a farm for which a farm acreage allotment or farm marketing quota is established, including the following: (i) Land devoted to nonagricultural use, (ii) land used for agricultural purposes, (iii) cropland acreage; and (iv) tillable cropland.

(4) Acreage planted to the commodity on the farm.

(5) Actual production for the farm.

(6) Farm marketing excess (acres or pounds).

(7) Marketing quota penalties, including but not limited to, assessments for marketing quota violations involving: (i) False identification, (ii) failure to account for production and disposition, (iii) failure to file a report, and (iv) the filing of a false report.

(Secs. 301, 363-368, 371, 374, 375, 379, 52 Stat. 38 as amended, 63-64, as amended, 66, as amended; 7 U.S.C. 1301, 1363-1368, 1375)

[35 FR 15355, Oct. 2, 1970, as amended by Amdt. 9, 45 FR 37398, June 3, 1980; 49 FR 38240, Sept. 28, 1984]

§ 711.4 Forms.

The following general forms, as revised from time to time, are prescribed for use in connection with review proceedings;

(a) MQ-53 Application for Review of Farm Marketing Quota.

(b) MQ-54 Notice of Untimely Filing of Review Application.

(c) MQ-56 Notice of Hearing of Review Application.

(d) MQ-58 Determination of Review Committee Farm Marketing Quota.

(e) MQ-59 Oath of Review Committeeman.

§ 711.5 Public information.

The clerk shall maintain a record of applications and review committee proceedings which shall be available at the office of the clerk for public inspection and copying in accordance with Part 798 of this chapter.

REVIEW COMMITTEE

§ 711.6 Eligibility as member of a panel.

Any farmer who meets the eligibility requirements for county committeeman prescribed in the regulations in Part 7 of Subtitle A of this title, as amended, in a county within the area of venue for which he is to be appointed shall be eligible for appointment as a member of a review committee panel for such area of venue. If the area of venue consists of only one county or a part of a county, these eligibility requirements must be met in such county or in a nearby county. No farmer whose legal residence is in one State shall be eligible for appointment as a member of a review committee panel for an area of venue in another State.

§ 711.7 Appointment of members of a panel.

The Secretary shall appoint six or more eligible farmers to serve as members of a review committee panel in each area of venue. Notice of appointment shall be sent to the State committee, which shall notify the farmers so appointed. Appointments may be made before, during, or after the period in which applications for review of quotas are required to be filed. Notwithstanding the foregoing, the Secretary shall have the continuing power to revoke or suspend any appointment made pursuant to the regulations in this part, and subject to the provisions of the act, to make such other appointment deemed proper.

§ 711.8 Oath of office.

Each farmer appointed to serve as a member of a review committee panel shall, as soon as possible after appointment, execute an oath of office on such form as may be prescribed by the Deputy Administrator, duly subscribed and sworn to or affirmed before a notary public. No farmer shall serve on a review committee unless such oath of office has been duly executed and filed with the State executive director or the clerk. A farmer appointed for consecutive terms to serve as a member of a review committee panel shall not be required to file a new oath of office after the original filing. If the form of oath of office is materially changed, a new oath of office shall be executed if required by the Deputy Administrator.

§ 711.9 Composition of review committee.

(a) *Three designated members from the panel constitute a review committee.* Three members from the panel shall act as a review committee to hear applications for review for the prescribed area of venue. The State executive director shall designate from the panel of members for the prescribed area of venue three members who shall act as a review committee to hear specific applications and shall designate one of these three members as chairman of the review committee and another member as vice-chairman. Where the number of applications pending require two or more review committees for prompt disposition of such applications, the State executive director shall designate the members of each review committee, the chairman and vice chairman thereof, and the specific application to be heard by each review committee. Two or more review committees may hear applications concurrently in an area of venue. In the absence of the chairman, the vice chairman shall perform the duties and exercise the powers of the chairman. The State executive director shall notify members of each review committee of the schedule of hearings. No member shall serve in any case in which a quota will be reviewed for a farm in which such member, any of his relatives or business associates, is interested, nor shall any member serve where he had acted as State, county, or community committee member on a quota to be reviewed by the review committee.

(b) *Only two members present to commence hearing.* Where only two members of a review committee are present to commence a hearing, although three members were scheduled to hear the application, at the request of or with the consent of the applicant in writing, a hearing conducted by two members of the review committee shall be deemed to be a regular hearing of the review committee as to such application. The determination made by such members shall constitute the determination of the review committee. In the event such members cannot agree upon a determination, such fact shall be set forth in writing and a new hearing scheduled by the State executive director. If the applicant does not consent in writing to a hearing conducted by two members of the review committee, the hearing shall be rescheduled.

(c) *Only two members remain to complete a hearing.* Where only two members of a review committee remain to complete a hearing commenced with three members, due to serious illness, death, or other cause which prevents one of the members from completing the hearing within a reasonable time, at the request or with the consent of the applicant in writing, the remaining two members of the review committee shall henceforth constitute an entire review committee for the purpose of such hearing. In the event such members cannot agree upon a determination, such fact shall be set forth in writing and a new hearing scheduled by the State executive director. If the applicant does not consent in writing to completion of the hearing by two members of the review committee, the hearing shall be rescheduled.

(d) *Reopened or remanded hearings.* In the case of a reopened or remanded hearing, if any member of the review committee is no longer in office because of death, resignation, or ineligibility, the State executive director shall designate another member of the review committee panel to serve on the review committee. If a hearing held pursuant to paragraph (b) or (c) of this section is reopened or remanded and only one review committee member is available to hear such reopened or remanded hearing, the State executive director shall designate two additional members from the review committee panel to serve on the review committee.

§ 711.10 Term of office.

Appointment as a member of a review committee panel shall be for a term of 3 calendar years. A member may be reappointed for succeeding terms. Notwithstanding the foregoing, a review committee shall continue in office to conclude hearings before it which are begun during such 3-year term and make final determinations thereof, or to hold a reopened hearing, or to conclude a hearing remanded to it by a court.

[Amdt. 3, 38 FR 967, Jan. 8, 1973]

§ 711.11 Compensation.

The members designated as review committeemen shall receive compensation when serving at the same rate as that received by the members of the county committee which established the quotas sought to be reviewed. No member of a review committee shall be entitled to receive compensation for services as such member for more than 30 days in any one year. Payment of compensation, reimbursement for travel expenses and rates therefor, shall be made under such conditions as may be prescribed by the Deputy Administrator.

§ 711.12 Effect of change in composition of review committee.

Nothing contained in §§ 711.6 to 711.11 relating to any vacancy or revocation or suspension of appointment and nothing done pursuant thereto shall be construed as affecting the validity of any prior hearing conducted or determination made in accordance with the regulations in this part, in which the member of the review committee whose office has become vacant participated, or as affecting in any way court proceeding which may be instituted to review such determination.

JURISDICTION

§ 711.13 Areas of venue and jurisdiction.

(a) *Areas of venue.* The State committee shall establish one or more areas of venue in the State. An area of venue may consist of all or part of a county, or more than one county within a State. In establishing areas of venue, the State committee shall take into consideration the requirements of section 363 of the Act as to eligibility of review committee members, the prompt handling of applications for review, transportation problems and the limit of 30-day service by review committeemen in any one year.

(b) *Jurisdiction.* A review committee shall have jurisdiction within the area of venue for which it is established to hear applications respecting quotas established or denied by written notice issued by the county committee or other authorized official for farms within its area of venue, in accordance with this part.

(c) A listing of the areas of venue within a State shall be available from the State ASCS office and the Deputy Administrator.

[35 FR 15355, Oct. 2, 1970, as amended at 49 FR 38240, Sept. 28, 1984]

APPLICATION FOR REVIEW OF QUOTA

§ 711.14 Application for review.

(a) *Manner and time of filing.* Any farmer who is dissatisfied with his quota may, within 15 days after the date of mailing to him of notice of such quota, file a written application for review thereof by the review committee. Such 15-day period is prescribed in accordance with section 363 of the Act. Unless application for review is timely filed, as determined under this section, the quota established by the notice shall not be subject to review by the review committee. Notice of quota subject to review under this part includes an official written notice as to the land constituting the farm. For example, a notice denying a request for farm reconstitution would be such a reviewable notice of quota. An application shall be in writing and addressed to, and filed with, the county executive director for the county from which the notice of quota was received. Any application (Form MQ-53 available on request) whether made on Form MQ-53 or not, shall contain the following:

(1) Date of application and commodity (including type where applicable, e.g. Upland cotton, Flue-cured tobacco).

(2) Correct full name and address of applicant.

(3) Brief statement of each ground upon which the application is based.

(4) A statement of the amount of quota which it is claimed should have been established.

(5) Signature of applicant.

In any case where an application is timely filed for review of a quota on a farm which was reconstituted by division of a parent farm into two or more farms, such application shall be considered an application for review of the reconstitution of the parent farm. In any such case the farm operator of each farm resulting from such reconstitution shall be considered an applicant for purposes of this part with all the rights and privileges provided in this part. If an action may be taken by an applicant which affects the rights of any other applicant in the case, the other applicants shall be given the opportunity to concur in such action or to oppose such action.

(b) *Procedure where application is not timely filed.* The county committee shall examine each application for review. If the application is not filed within the prescribed 15-day period, the county executive director shall send a notice of untimely filing on Form MQ-54 by certified mail to the applicant at the address shown on the application. The applicant may file a request in writing with the county executive director within 15 days after the date of mailing such notice to him requesting a review committee hearing on the sole issue of whether the application was filed within the prescribed 15-day period. In the absence of timely request in writing for such review committee hearing, the application shall be deemed withdrawn by the applicant. If timely request in writing for such review committee hearing is filed, a copy of the application and request shall be forwarded by the county executive director to the State executive director with a request that a hearing on the sole issue of timely filing be scheduled before the review committee. In cases involving the sole issue of timely filing of an application, the review committee shall determine whether the date the application was filed, or the postmark date in case of mailing by the applicant, was within the 15-day period. If the review committee determines that the application was timely filed, a hearing on the merits of the application shall be held. In addition, a hearing on the merits shall be conducted and the application treated as timely filed in any case where the review committee determines that the applicant in good faith requested review of his quota by the county or State committee under the regulations in Part 780 of this chapter in reliance upon action or advice of any authorized representative of a county or State committee and subsequently filed application for review under this part within a reasonable time after he learns that the quota is subject to review committee jurisdiction.

(c) *Withdrawal of application.* An application may be withdrawn upon the written request of the applicant. Any application so withdrawn or deemed withdrawn under paragraph (b) of this section shall be endorsed by the clerk "Dismissed by the applicant".

(d) *Procedure where application is timely filed.* The county committee shall examine each application for review and where an application is found to be timely filed, the county executive director shall forward a copy of the application to the State executive director with a request that a hearing on the merits be scheduled before the review committee.

§ 711.15 Matters subject to review.

In all cases, the review committee shall consider only such factors as, under applicable provisions of law and regulations, are required or permitted to be considered by the county committee in the establishment of the quota being reviewed. The establishment of national marketing quotas and apportionment of national acreage allotments and marketing quotas among States and counties and the establishment of reserve acreages and quotas at the national level and apportionment of such reserves among States and counties are not subject to review by a review committee. Review of a quota may include any of the factors which enter into the establishment of such quota for the farm and crop year as set forth in § 711.3(f): *Provided, however,* That any factor of such quota considered by a review committee in a prior determination for the farm and crop year shall not be considered in a subsequent review proceeding. For example, a determination of the farm acreage allotment by the review committee would not be reconsidered upon any application for review of the farm marketing excess for the same farm and crop year.

[49 FR 38240, Sept. 28, 1984]

§ 711.16 County committee answer.

(a) The county committee shall prepare a written answer to each application scheduled for hearing setting forth the pertinent facts, the applicable regulations, the data used in establishing the quota and any other matters deemed pertinent:

(b) *Provided,* That the answer may be limited to the issue of timely filing where the hearing is limited to that issue. If the county committee determines that the increase, adjustment or other determination requested in the application is proper in whole or in part, the written answer shall set forth the proposed determination and in such cases, the applicant shall be notified by the county committee of such proposed determination prior to the scheduled review hearing if practicable to do so. In the event the applicant is satisfied with the proposed determination, the county committee shall, upon the withdrawal of the application, take the necessary action to revise the quota within the limits of the Act and applicable commodity regulations if the required amount of acreage allotment or marketing quota is available in the county. The State executive director may perform the functions of the county committee under this section and the functions of the county committee and county executive director under § 711.14(b) and (d) in any case where the application for review involves a notice of farm marketing quota issued by officials other than the county committee.

[35 FR 15355, Oct. 2, 1970, as amended at 49 FR 38240, Sept. 28, 1984]

§ 711.17 Amendments.

Upon due request, and within the discretion of the review committee, the right to amend the application and all procedural documents in connection with any hearing, shall be granted upon such reasonable terms as the review committee may deem right and proper.

HEARING AND DETERMINATION

§ 711.18 Place and schedule of hearing.

The place of hearing shall be in the office of the county committee through which the quota sought to be reviewed was established, or such other appropriate place in the county as may be designated by the State executive director or by the review committee in cases arising under § 711.21: *Provided, however,* That the place of hearing may be in some other county if agreed to in writing by the applicant. The State executive director shall schedule applications for hearings and forward such schedule to the clerk.

§ 711.19 Notice of hearing.

The clerk shall give written notice on Form MQ-56 to the applicant by depositing such notice in the U.S. mail, certified and addressed to the last known address of the applicant at least 10 days prior to the time appointed for the hearing and copies of such notice shall also be sent to the county committee and the State office. If the applicant requests waiver of such 10-day period, the hearing may be scheduled earlier upon consent of the other interested parties. The notice of the hearing shall specify the time and place of the hearing, contain a statement of the statutory authority for the hearing, state that the application will be heard by the review committee duly appointed for the area of venue in which the applicant's farm is located, and that a verbatim transcript may be obtained by the applicant if he makes arrangement therefor before the hearing and pays the expense thereof.

§ 711.20 Continuances.

Hearings shall be held at the time and place set forth in the notice of hearing or in any subsequent notice amending or superseding the prior notice, but may without notice other than an announcement at the hearing by the chairman of the review committee, be continued from day to day or adjourned to a different place in the county or to a later date or to a date and place to be fixed in a subsequent notice to be issued pursuant to § 711.19. In the event a full committee of three is not present, those members present, or in the absence of the entire committee, the clerk, shall postpone the hearing unless the hearing is held pursuant to § 711.9(b) or (c). There shall not be a continuance for lack of a full committee in the case of a reopened or remanded hearing where the hearing was initially held pursuant to § 711.9(b) or (c) and the two review committeemen who previously held the hearing are present and eligible to serve.

§ 711.21 Conduct of hearing.

(a) *Open to public.* Except as otherwise provided in §§ 711.1 to 711.50, each hearing shall take place before the entire review committee and shall be presided over by the chairman of such committee. The hearing shall be open to the public and shall be conducted in a fair and impartial manner and in such a way as to afford the applicant, members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture, and all persons appearing on behalf of such parties, reasonable opportunity to give and produce evidence relevant to the quota being reviewed.

(b) *Consolidation of hearings.* Wherever practicable, two or more applications relating to the same commodity and the same farm shall be consolidated by the review committee on its own motion or at the request of the State executive director and heard at the same time on the same record. In any case involving two or more farms resulting from reconstitution by division of a parent farm, the hearing shall be consolidated.

(c) *Representation.* The applicant and the Secretary may be represented at the hearing. The county committee shall be present or represented at the hearing.

(d) *Order of procedure.* At the commencement of the hearing, the chairman of the review committee shall read or cause to be read the pertinent portions of the application for review. The written answer of the county committee shall be submitted and shall be made a part of the record of the hearing. If the applicant asserts and shows to the satisfaction of the review committee that he has not been informed of the county committee's position in time to afford him adequate opportunity to prepare and present his case, the review committee shall continue the hearing, without notice other than announcement thereof at the hearing, for such period of time as will afford the applicant reasonable opportunity to meet the issues of fact and law involved. After answer by the county committee and following such continuance, if any, as may be granted by the review committee, evidence shall be received with respect to the matters relevant to the quota under review in such order as the chairman of the review committee shall prescribe. The review committee may take official notice of relevant publications of the Department of Agriculture and regulations of the Secretary.

(e) *Submission of evidence.* The burden of proof shall be upon the applicant as to all issues of fact raised by him. Each witness shall testify under oath or affirmation administered by the member of the review committee who is presiding at the hearing. The review committee shall confine the evidence to pertinent matters and shall exclude irrelevant, immaterial, or unduly repetitious evidence. Interested persons shall be permitted to present oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing shall be concluded within such reasonable time as may be determined by the review committee.

(f) *Transcript of testimony.* The review committee shall provide for the taking of such notes including but not limited to stenographic reports or recordings at the hearing as will enable it to make a summary of the proceedings and the testimony received at the hearing. The testimony received at the hearing shall be reported verbatim by a representative of a private firm under an existing Departmental contract for such services if the review committee, the State Executive Director, or the applicant, requests such transcript be made. If such transcript is so requested, the State Executive Director shall advise the Deputy Administrator, State and County Operations, prior to the hearing date who will then arrange for the service. A copy of such transcript shall be furnished to each of the following: The review committee, the State Executive Director, and the Regional Attorney, Office of the General Counsel, United States Department of Agriculture. The applicant or his representative may obtain a copy from the firm at his own expense.

(g) *Written arguments and proposed findings.* The review committee shall permit the applicant, the members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture to file written arguments and proposed findings of fact and conclusions, based on the evidence adduced at the hearing, for the consideration of the review committee within such reasonable time after the conclusion of the hearing as may be prescibed by the review committee. Such written arguments and proposed findings shall be filed in triplicate with the clerk and an additional copy thereof shall be provided to the other party.

[35 FR 15355, Oct. 2, 1970, as amended by Amdt. 5, 38 FR 16989, June 28, 1973]

§ 711.22 Nonappearance of applicant.

(a) *Original hearing.* If, at the time of the hearing, the applicant is absent and no appearance is made on his behalf, the review committee shall, after a lapse of such period of time as it may consider proper and reasonable, have the name of the absent applicant called in the hearing room. If, upon such call, there is no response, and no appearance on behalf of such applicant and no continuance has been requested by the applicant, the review committee shall thereupon close the hearing, as to such applicant, and, without further proceedings in the case, make a determination dismissing the application.

(b) *Reopened or remanded hearing.* If, at a hearing which is reopened pursuant to § 711.25 or remanded by a court, the applicant is absent and no appearance is made on his behalf, the review committee shall continue the hearing for a reasonable period of time and if the applicant does not appear at such continued hearing, the review committee shall make a determination.

§ 711.23 Determination by review committee.

As soon as practicable after hearing on an application, including a hearing on the sole issue of timely filing, the review committee shall make a determination upon the application. If it is determined by the review committee that the application should be dismissed for untimely filing or denied, the review committee shall so indicate. If it is determined that the application should be granted in whole or in part, the review committee shall establish the quota which it finds to be proper. Each determination made by the review committee shall be in writing, shall contain specific findings of fact and conclusions together with the reasons or basis therefor, and shall be based upon and made in accordance with reliable, probative, and substantial evidence adduced at the hearing. The concurrence of two members of the review committee shall be sufficient to make a determination. The written determination shall contain such subscription by each member of the review committee as will indicate his concurrence therein or his dissent therefrom. In case of an increase in the quota, the review committee shall specifically state in the determination in what respect, if any, the county committee has failed properly to apply the act and regulations thereunder. If such increase is based upon evidence not available to the county committee, the findings of the review committee shall so indicate. The appropriate county executive director shall make available to the review committee such clerical and stenographic assistance as may be required.

§ 711.24 Service of determination.

A copy of the determination, certified by the clerk as a true and correct copy of the signed original, shall be served upon the applicant by sending the same by certified mail addressed to the applicant at his last known address. The copy of the determination shall contain at the top thereof substantially the following statement: "To all persons who, as operator, landlord, tenant, or sharecropper, are or will be interested in the above-named commodity on the farm identified below in the year for which the marketing quota being reviewed is established" and such statement shall constitute notice to all such persons. The clerk shall make a notation on the original determination of the date and place of such mailing. The clerk forthwith shall forward two copies of such determination to the State office, and one copy to the county committee. The determination of the review committee does not become final until the period for reopening of hearing under § 711.25 has expired without any reopening; or if reopened thereunder, such determination becomes final upon issuance of a new determination pursuant to the reopened hearing, subject to further appeal to a court by the applicant.

§ 711.25 Reopening of hearing.

(a) *Upon motion of review committee.* Upon its own motion within 15 days from the date of mailing to the applicant of a copy of the determination of the review committee, the review committee may reopen a hearing for the purpose of taking additional evidence or of adding any relevant matter or document.

(b) *Upon written request based on new evidence.* Upon written request by the applicant, the county committee, the State executive director, or other interested parties, to the review committee within 15 days from the date of mailing to the applicant of a copy of the determination of the review committee, the review committee shall reopen the hearing for the purpose of taking additional evidence or of adding any relevant matter or document if the review committee finds that such evidence or documents constitute new evidence not available to the parties at the time of the hearing.

(c) *Upon written notice by the Secretary.* Upon written notice by the Secretary or on his behalf by the Deputy Administrator to the review committee within 45 days from the date of mailing to the applicant of a copy of the determination of the review committee on Form MQ-58, the hearing shall be deemed reopened and the State executive director shall schedule the reopened hearing.

(d) *Schedule of reopened hearing.* Schedule of and notice of any reopened hearing shall follow the requirements of §§ 711.18 and 711.19 insofar as practicable. Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, no hearing shall be reopened after an appeal to a court pursuant to section 365 of the act has been timely filed by the applicant. No special hearing to contest a reopening of a hearing shall be scheduled; however, the applicant may present evidence and arguments to contest the reopening when the reopened hearing is held.

§ 711.26 Record of hearing.

The record of the proceedings shall be prepared by the clerk and shall consist of the following:

(a) All procedural documents in the case under review, including the application and written notices of quota and hearing and any other written notice in connection with the application.

(b) Copies of regulations presented at the hearing.

(c) The answer of the county committee or the State executive director.

(d) The summary of the proceedings and the testimony prepared by the review committee if a verbatim transcript is not made, or a transcript of the testimony where a verbatim transcript is made, in accordance with § 711.21(f), to which shall be annexed any documentary evidence received at the hearing.

(e) Any written arguments or proposed findings of fact and conclusions filed in connection with the hearing.

(f) The written determination of the review committee.

(g) A list of all papers included in the record and a certificate by the clerk stating that such record is true, correct and complete.

COURT PROCEEDINGS

§ 711.27 Procedure in the case of court proceedings.

Upon the institution of any suit against the review committee for the purpose of reviewing its determination upon any application for review, the review committee is required by Section 365 of the Act to certify and file in court a transcript of the record upon which the determination was made, together with the findings of fact made by the review committee. Any suit for review is required to be instituted by the applicant within 15 days after a notice of the review committee's determination is mailed to him. Such suit may be instituted in the U.S. District Court or in any court of record of the State having general jurisdiction, sitting in the county of the district in which the applicant's farm is located. The bill of complaint in such proceeding may be served by delivering a copy thereof to any member of the review committee. Any member of the review committee served with papers in such suit shall immediately forward such papers to the clerk. No member of the review committee shall appear or permit any appearance in his behalf or in behalf of the review committee, or take any action in respect to the defense of such suit, except in accordance with the instructions from the Deputy Administrator.

PUERTO RICO

§ 711.28 Special provisions applicable to Puerto Rico.

Notwithstanding the provisions of §§ 711.1 to 711.50, the Caribbean Area Agricultural Stabilization and Conservation Committee (hereinafter referred to as the "ASC Committee") shall perform, insofar as applicable, the duties and assume such responsibilities and be subject to the limitations as are otherwise required of State and county committees except as provided herein. The Director, Caribbean Area ASCS office, shall recommend members of the review committee panel, the areas of venue, and perform the functions of the State executive director. Any farmer who is eligible to vote in a referendum for which a quota has been proclaimed shall be eligible for appointment as a member of a review committee panel. The clerk shall be the ASC district supervisor of the district in which the review committee will hold its hearings. Where it is impractical or impossible to use the United States mail to serve the applicant with notice of hearing or determination, use shall be made of such other method of service as is available. However, when such other method is used, the ASC Committee shall make provision for keeping an accurate record of the date and method of delivery to the applicant.

OMB CONTROL NUMBERS

§ 711.29 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 711) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0068.

[49 FR 38240, Sept. 28, 1984]

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, AND WHEAT

Subpart—Feed Grain, Rice, Cotton, and Wheat Programs for the 1985 Crop Year

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AUTHORITY: Secs. 101(i), 103(g), 105B, 107B, 107C, 109, 113, and 1001; 95 Stat. 1242, as amended, 95 Stat. 1234, as amended, 95 Stat. 1227, as amended, 95 Stat. 1221, as amended, 96 Stat. 766, 91 Stat. 950, as amended, 95 Stat. 1264, 91 Stat. 917, as amended; 7 U.S.C. 1441, 7 U.S.C. 1444, 7 U.S.C., 1444d, 7 U.S.C. 1445b-1, 7 U.S.C. 1445b-2, 7 U.S.C. 1445d, 7 U.S.C. 1445h, 7 U.S.C. 1309.

SOURCE: 48 FR 1683, Jan. 14, 1983, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 713 appear at 49 FR 38092, Sept. 27, 1984, and at 50 FR 11146, Mar. 20, 1985.

Subpart—Feed Grain, Rice, Cotton, and Wheat Programs for the 1985 Crop Year

§ 713.1 Applicability.

(a) The regulations in this subpart, which are applicable to the feed grain, rice, cotton, and wheat programs for the 1985 year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with Commodity Credit Corporation (CCC) and comply with the contracts and the provisions of this subpart may qualify for program benefits.

(b) In accordance with section 1101 of the Agriculture and Food Act of 1981, as amended, and the regulations in Part 795 of this chapter, as amended, the total amount of:

(1) Payments (excluding disaster payments) which a person shall be entitled to receive annually under the feed grain, rice, upland and ELS cotton, and wheat programs shall not exceed $50,000.

(2) Disaster payment which a person shall be entitled to receive annually under the feed grain, rice, upland cotton, and wheat programs shall not exceed $100,000.

(c) In accordance with the regulations in Part 796 of this chapter, as amended, payments shall not be made to program participants who harvest or knowingly permit to be harvested for illegal use marihuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by them.

(d) The programs are applicable throughout the United States, including Puerto Rico.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38088, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985; 50 FR 25693, June 21, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations of this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 713.3 Definitions.

The following definitions shall be applicable for all purposes of program administration. The terms defined in Part 719 of this chapter, as amended, governing reconstitutions of farms, shall also be applicable.

(a) "*Annual nonconserving crop*" means any annual crop intended for harvest or use in any feed form, except for the following:

(1) Grasses regardless of use, including sweet sorghum, millet and sudan grass;

(2) Legumes, including peas, beans, or soybeans produced for seed, grain, or processing where their planting was delayed beyond the normal planting period by a disaster and the crop is too poor to be used for seed, grain, or processing. In all other cases, soybeans produced for seed, grain, or processing are a nonconserving crop; and

(3) Small grains that are disposed of before the disposal deadline and excluded by the operator.

(b) "*Considered planted acreage*" means for a crop the following:

(1) For farms on which producers are participating in an acreage reduction program for the crop, the considered planted acreage shall be the difference between the acreage base for the crop and the planted acreage of the crop;

(2) For farms on which producers are participating in a set-aside, voluntary diversion, or wheat grazing and hay program, the considered planted acreage shall be the sum of the following as applicable:

(i) Any acreage required to be devoted to conservation uses under a set-aside, acreage reduction, or diversion program as prescribed in this part or under a payment-in-kind diversion program as prescribed in Part 770 of this chapter,

(ii) For wheat, any acreage for payment under the wheat grazing and hay program,

(iii) Any voluntary reduction below the acreage base established for the crop, and

(iv) The acreage that the county committee determines the producer intended to plant to the crop but was prevented from planting to the crop and to later nonconserving crops as the result of a natural disaster or other condition beyond the control of the producer;

(3) For farms for which a zero planted acreage is reported in a year when an acreage reduction program is in effect for the crop, the considered planted acreage shall be the acreage base for the crop;

(4) When two or more crops are combined for purposes of program participation and compliance, (i) the considered planted acreage for the crop for farms for which there is a report of zero planted acreage of all such crops shall be the acreage base for the crop; and (ii) the considered planted acreage for farms on which producers are participating in an acreage reduction program for the crops shall be the difference between the sum of the planted acreages for the crops and the sum of the acreage bases for the crops prorated to the individual crops based upon the planted acreage of the respective crops in the current year;

(5) For ELS cotton farms for which an acreage base adjustment is made using the reserve in accordance with § 713.7(g) and for other farms for which an acreage base adjustment is made in accordance with § 713.7 (c) and (d), the considered planted acreage may also be adjusted in accordance with instructions issued by the Deputy Administrator; and

(6) For other farms, the considered planted acreage shall be that acreage which the county committee determines that the producer intended to plant to the crop but was prevented from planting to the crop and to later nonconserving crops as a result of a natural disaster or other condition beyond the control of the producer.

(c) *"Corn"* means field corn or sterile high-sugar corn. Popcorn, sweet corn, and corn varieties grown for decoration uses are excluded.

(d) *"Crop" or "Commodity"* means barley, corn, grain sorghum, oats, rice, upland cotton, or wheat ("Crop" is used when the reference is to a specific year or to growing plants; "Commodity" is used when the reference is general and abstract).

(e) *"Current year"* means the calendar year in which the crop with respect to which payment may be made under this subpart would normally be harvested.

(f) *"Disposal deadline"* means the date or time by which an acreage of barley, wheat, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage under § 713.62.

(g) *Extra Long Staple (ELS) cotton* means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by the Secretary: American-Pima; Sea Island; Sealand; all other varieties of the Bardadense species of cotton and any hybrid thereof; and any other cotton in which one or more of these varieties predominate.

(h) *"Grain sorghum"* means grain sorghums of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(i) *"Marketing year"* means the 12-month period beginning in the current year and ending the next year as follows:

(1) *Barley, oats, and wheat.* June 1-May 31.

(2) *Upland cotton and rice.* August 1-July 31.

(3) *Corn and grain sorghum.* October 1-September 30.

(j) *"NCA crops"* means the crops which are so designated by the Secretary of Agriculture for any crop year as set forth in a notice of determination published in the FEDERAL REGISTER.

(k) *"Planted acreage"* for a crop means the total of:

(1) The acreage planted for harvest as determined by the county committee under guidelines as set forth in § 713.4; and

(2) The volunteer acreage of the crop which is harvested for grain or which is determined by the county committee to be economically practical to harvest.

(l) *"Planted and considered planted acreage"* means for a crop the total of the planted and considered planted acreages for the crop.

(m) *"Rice"* means rice excluding sweet, glutenous, or candy rice such as Mochi Gomi.

(n) *"Small grains"* means barley, oats, and wheat.

(o) *Upland cotton* means planted cotton and stub cotton other than ELS cotton.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38088, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985; 50 FR 25693, June 21, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.4 Determining crop acreages.

The county committee shall apply the following guidelines in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator:

(a) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a low yield disaster payment or credit in accordance with the provisions of § 713.105.

(b) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the ending planting date established for the crop but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 713.60 through 713.74;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in Part 718 of this chapter;

(4) The acreage of barley, oats, or wheat disposed of with feed benefit before the disposal deadline;

(5) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instructions issued by the Deputy Administrator;

(6) The acreage approved for grazing and hay payment in accordance with the provisions of § 713.54;

(7) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(8) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(9) The acreage of barley, oats or wheat which is determined by the county committee to be not economically practical to harvest because of a low yield and which is excluded as crop acreage by the operator; and

(10) The acreage of barley, oats, or wheat which is left standing as a cover crop past the disposal deadline if the producer (i) requests permission from the county committee before the crop reporting date; (ii) destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain; (iii) does not obtain feed benefit from the crop; and (iv) pays the cost of a farm visit to check compliance with program requirements for disposal of the crop.

(c) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except that when corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38088, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985; 50 FR 25693, June 21, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.5 State and county check yields.

(a) *State check yields.* State check yields for the current year are determined for each State where feed grains or wheat are produced. State check yields are determined on the basis of the average yields per acre for the 10-year period immediately preceding the year prior to the current crop year. If average yields are not available, State check yields are determined by the Deputy Administrator on the basis of available data for the State and for other States. Adjustments may be made in the State check yields to reflect productivity trends or abnormal conditions during any such 10-year period.

(b) *County check yields.* County check yields for the current year are determined for each county where feed grains or wheat are produced. The county check yield for the current year shall be established by the State committee in accordance with instructions issued by the Deputy Administrator and shall be the State check yield as adjusted to reflect the productivity of the county.

(c) *Source and availability of data.* State yield data for each year are obtained from the Statistical Reporting Service (SRS), USDA. The county feed grain and wheat yields for the current year are available for inspection in the county ASCS office. Both the State and county feed grain and wheat yields are available for inspection in the State ASCS office.

(d) *Cotton and rice.* State and county check yields are not determined for upland and ELS cotton and rice.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38092, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.6 Farm yields.

(a) *Barley, corn, grain sorghum, oats, and wheat yields*—(1) *Determining yields.* The bushel per acre farm yield for the current year shall be established in accordance with instructions issued by the Deputy Administrator and shall be the county check yield for the crop as adjusted to reflect the farm productivity. Separate farm yields may be established for irrigated acreages and for nonirrigated acreages if (i) the county committee determines that irrigation is a normal practice on the farm in most years; (ii) irrigation makes a substantial difference in crop yields; and (iii) the producer submits adequate evidence to the county committee that sufficient irrigation water is available for use on the acreage designated by the producer as irrigated acreage and that reasonable irrigation practices have been performed with respect to the irrigated acreage.

(2) *Provable yields.* Notwithstanding the provisions of paragraph (a)(1) of this section, if reliable records of the actual yield in bushels per acre on the farm for each of the 5 years immediately preceding the current year are available to the county committee, the yield established for the farm shall not be less than the average of such yields. The actual yield for a year may be assigned or adjusted as follows:

(i) If for either of the 2 earliest years of the 5-year base period there was no acreage of the crop or the production or acreage of the crop on the farm cannot be reconstructed, the county committee may assign a yield for any such year based upon the actual yield for similar farms in the county or other surrounding area;

(ii) If the acreage report filed in accordance with Part 718 of this chapter shows that no acreage of the commodity was grown on the farm, the county committee may assign a yield for the farm based upon the actual yield for similar farms in the county or other surrounding areas; and

(iii) If any yield for a farm for any year which is used in the calculation of the 5-year base period is less than 80 percent or more than 125 percent of the simple 5-year average of actual and assigned yields for the farm, the county committee may adjust such yields, in accordance with instructions issued by the Deputy Administrator, to provide for a yield which is more representative of normal operations and weather conditions for the farm.

(b) *Cotton and rice yields.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop may be assigned for the farm for such year based upon the actual yields for similar farms in the county or surrounding area.

(2) If any yield in the 3-year period preceding the current year is adversely affected as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years.

(3) In producer administrative rice areas under the rice program for the crop years 1978-81, the actual yield for a farm shall be the weighted average of the producer yields on that farm for that year.

(4) The Deputy Administrator may prescribe a limitation on the amount by which an upland and ELS cotton yield may be reduced from one year to the next year.

(c) *Yield reduction.* For the purpose of determining the amount of any deficiency payment as provided for in § 713.108 or the amount of any low yield or prevented planting disaster payment as provided for in § 713.105, the established yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator to reflect any reduction in the current year's yield for such farm which is the result of causes other than a natural disaster or other condition beyond the producer's control, such as a change in farming practice.

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per acre in accordance with paragraphs (a)(2) and (b) of this section. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) *Unrepresentative acreage.* If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute proven yields for wheat and feed grain in accordance with paragraph (a)(2) of this section or for cotton or rice yields in accordance with paragraph (b) of this section.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 13481, Apr. 5, 1984; 49 FR 38088, 38092, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985; 50 FR 25694, June 21, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1984 for barley, corn, grain sorghum, oats, rice, upland and ELS cotton, and wheat.

(b) The acreage base established for a crop of barley, corn, grain sorghum, oats, rice, upland cotton, or wheat for a farm shall be the average of the planted and considered planted acreages for the crop for 1 or more years as announced by the Secretary.

(c) The acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

(d) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the years in the rotation cycle that correspond to the previous year or the 2 previous years.

(e) The acreage base established for a crop of a commodity on the farm may be adjusted as follows:

(1) The operator must show, and the county committee must determine, that the acreage base previously established for a crop of a commodity on the farm is not representative of the current operator's normal operations of the farm; and

(2) The county committee may approve a recomputation of the acreage base for the crop of a commodity on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years in accordance with in-

structions issued by the Deputy Administrator.

(f) The operator of a farm may request that the acreage base for a crop of a commodity on a farm be determined in acordance with either paragraph (d) or (e) of this section. Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base for such crop in future years in accordance with instructions issued by the Deputy Administrator.

(g) For each of the 1984, 1985, and 1986 crops of ELS cotton, an acreage base reserve is established that shall equal 5 percent of the total of the farm acreage bases established for such crop in accordance with paragraph (h) of this section. Such reserve shall be in addition to the total of the farm acreage bases and shall be used by the county committee, after approval by and in accordance with instructions issued by the Deputy Administrator, for the purpose of adjusting the 1984, 1985, and 1986 acreage bases established for the farm to correct for inequities and prevent hardship, and for the purpose of establishing acreage bases for farms on which no ELS cotton was planted during the period 1980 through 1983. The operator shall file a written request, in such form as is prescribed by the Deputy Administrator, for an adjustment using the reserve. Such adjustments shall be in addition to and not in lieu of adjustments approved under paragraphs (e) and (f) of this section.

(h) If the county committee determines that an adequate supply of irrigation water is a prerequisite for growing the crop on the farm, the county committee shall adjust the acreage base for a crop for a year to the extent that irrigation water is not available for growing the crop on the farm for the year.

[49 FR 38089, Sept. 27, 1984, and 50 FR 11146, Mar. 20, 1985, as amended at 50 FR 25694, June 21, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.8 Normal crop acreages.

The normal crop acreage (hereinafter called "NCA") is the sum of the acreages for the farm of the NCA crops as designated by the Secretary of Agriculture as set forth in a notice of determination which is published in the FEDERAL REGISTER and which establishes an NCA requirement for the crop year.

§ 713.9 Notice of crop acreage bases, yields, and NCA.

The operator of a farm shall be notified in writing of the crop acreage bases, yields, and, if applicable, the NCA which is established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing that such producer not be furnished with the notice. This producer shall be considered as having been timely and correctly notified of the contents of the notice.

§ 713.10 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with Part 719 of this chapter.

(b) The county committee shall establish a yield for wheat, barley, corn, grain sorghum, and oats for each combined farm that has an acreage base for the crop after taking into consideration such factors as the yield(s) on the component parts of such farms, comparable farms, and other factors that will result in yields being representative of the reconstituted farm.

(c) The yield established for upland and ELS cotton and rice for a combined farm shall not, except for rounding, exceed the weighted average of the yields established for the component parts of such farm.

(d) The actual yields established for wheat and feed grains for a combined farm shall not, except for rounding, exceed the weighted average of the actual yields established for the component parts of such farm.

(e) The weighted average of the yields established for any crop for the farms resulting from a division shall not, except for rounding, exceed the yield established for the parent farm before being divided.

(f) In determining the weighted average yields in paragraphs (c), (d), and (e) of this section, the farm acreage base for the current year shall be used.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38092, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§§ 713.11—713.48 [Reserved]

§ 713.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided for in this subpart. The contract shall provide for recording the shares for division of deficiency payments for the crop. The operator shall also agree to timely file a report of acreage on Form ASCS-578 accurately listing the ACR acreage and the planted acreage of the crop(s) planted for harvest on the farm.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with 7 CFR Part 1421 and 7 CFR Part 1427. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this subpart.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, cash land diversion, payment-in-kind or wheat grazing and hay program is to obain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. The adverse effects on CCC of the producer's failure to comply with a contract are obvious; however, it would be impossible to compute the actual damages suffered by CCC.

[49 FR 38089, Sept. 27, 1984, and 50 FR 11146, Mar. 20, 1985]

§ 713.50 Contracting procedures.

(a) *Signup.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office not later than a date specified by the Secretary.

(b) *Producer eligibility.* (1) The producer must be a person who shares in the risk of producing the program crop produced in the current year (or shares in the proceeds therefrom) on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred on the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

[49 FR 38089, Sept. 27, 1984, and 50 FR 11146, Mar. 20, 1985]

§ 713.51 Required acreage reduction.

(a) A notice of determination will be published in the FEDERAL REGISTER for each crop providing as follows:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base less the required reduction; and

(2) Devote to conservation uses as prescribed in §§ 713.60 through 713.74 an acreage equal to the reduced acreage, or a proportionately smaller acreage if the planted acreage is smaller than the permitted acreage.

§ 713.52 Required set-aside.

(a) A notice of determination will be published in the FEDERAL REGISTER for each crop providing as follows:

(1) Whether a set-aside requirement is in effect for a crop year for a specific crop of feed grain or wheat;

(2) The percentage of the planted crop acreage that is required to be set-aside; and

(3) Whether producers on a farm are required not to exceed the NCA established for the farm, less any acreage which is devoted to conservation uses under any program plus any wheat grazing and hay acreage.

(4) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the NCA requirements, if applicable; and

(2) Devote to conservation uses as prescribed in §§ 713.60 through 713.74 an acreage equal to the set-aside requirement.

§ 713.53 Land diversion.

(a) A notice of determination will be published in the FEDERAL REGISTER for each crop providing as follows:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The percentage of the planted crop acreage or of the crop acreage base that producers are required to divert from the production of the crop under the program;

(3) The payment rate;

(4) Whether advance payments will be available;

(5) Whether compliance with the diversion requirement is voluntary or is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(6) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop; and

(2) Devote to conservation uses as prescribed in §§ 713.60 through 713.74 an acreage which is equal to the required diverted acreage.

§ 713.54 Wheat grazing and hay.

(a) A notice of determination will be published in the FEDERAL REGISTER announcing whether a wheat grazing and hay program is offered for a crop year and the applicable payment rate.

(b) In order to be eligible for payment under the wheat grazing and hay program for a crop year, producers of wheat shall do all of the following:

(1) Graze or cut for green chop, hay, or silage immature wheat that was planted for harvest as grain;

(2) Record the acreage for grazing and hay on Form 477;

(3) Have the cutting completed, or grazing to the point that the wheat is substantially destroyed by the disposal deadline; and

(4) Comply with all other program requirements for the crop.

(c) In no event can producers receive a payment under the wheat grazing and hay program on more than the larger of:

(1) 50 acres; or

(2) 40 percent of the total acreage of barley, corn, grain sorghum, oats, upland cotton, and wheat which is intended for harvest in the current year.

§ 713.55 Reduction in acreage to be devoted to conservation uses.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with Part 795 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for downward adjustment is filed.

(b) Any reduction in ACR acreage to be required under this section shall be computed by: (1) Estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, (2) determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and (3) multiplying the percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction or set-aside programs are in effect, the ACR acreage under the acreage reduction or set-aside programs shall be reduced to zero before the diversion acreage is reduced. If the producer is participating in the acreage reduction or set-aside program on two or more farms, the producer may elect to have the reduction in ACR acreages under these programs, but not under the land diversion program, divided among the farms in such proportion as the producer may designate.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38092, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§§ 713.56—713.59 [Reserved]

§ 713.60 Basic rules for ACR acreage.

Except as set forth in §§ 713.65 through 713.74 and in Notices of Determination published in the FEDERAL REGISTER, ACR acreage which is designated in accordance with the provisions of §§ 713.51 through 713.53 must:

(a) Be eligible land according to § 713.61;

(b) Meet minimum size and width requirements as specified in Part 718 of this chapter, as amended;

(c) Be devoted to approved cover or practices in accordance with the provisions of § 713.62;

(d) Not be grazed or harvested, except as provided in § 713.63; and

(e) Be cared for in accordance with the provisions of § 713.64.

§ 713.61 Eligible land.

(a) For 1984 and subsequent years, land designated as acreage conservation reserve (ACR) acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section.

(b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year or land on which water storage systems are installed may not be so designated;

(2) Is in a summer fallow rotation as shown by the past history of crops on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to and in at least 2 of the 3 immediately preceding years was devoted to grasses or leg-

umes for the production of hay, seed, or pasture in rotation with small grains or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals exceed acreage newly seeded to such grasses or legumes;

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section.

(4) Is devoted to perennial grasses or legumes or other vegetative cover, excluding nursery stock and orchards or vineyards, if:

(i) The land had previously been eligible to be designated as conservation use acreage of ACR acreage, as applicable, in 1982 or a subsequent year; and

(ii) Such grasses or legumes were planted either in the spring of the year in which the land was eligible to be designated as ACR acreage or in the fall of the preceding year; or

(5) Does not meet the requirements of paragraph (b)(1) of this section if the ACR acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b)(1) of this section, and such cropland is designated as ACR acreage in the following order:

(i) All cropland eligible under paragraph (b)(1) of this section even though such cropland may already have been planted in the current year;

(ii) All cropland was devoted to small grains or row crops in 1 of the last 3 years; and

(iii) All cropland that was not devoted to small grains or row crops in the last 3 years.

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with 7 CFR Part 752;

(ii) Under the Great Plains Conservation Program in accordance with 7 CFR Part 631;

(iii) Or as ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in 7 CFR Part 718 are met; and

(ii) The county committee determines that the areas are normally planted to a crop; or

(4) That the producer does not have authority to use for program crops (e.g., highways, railroads, and other right of ways, airport buffer strips, and other similar areas); or

(5) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year, by no later than the final reporting date for spring-seeded crops.

[49 FR 38090, Sept. 27, 1984, and 50 FR 11146, Mar. 20, 1985]

§ 713.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.* (1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service (SCS), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops of practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 713.63(b).

(4) The State committee shall approve cover crops or practices that sufficiently protect the land from wind and water erosion after consulting with the SCS State Conservationist.

[49 FR 38090, Sept. 27, 1984, and 50 FR 11146, Mar. 20, 1985, as amended at 50 FR 25694, June 21, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.63 Use of ACR acreage.

(a) *Harvesting.* Harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(b) *Grazing.* Grazing is prohibited during the 5 principal growing months for crops in the county between February 28 and November 1 as determined by the county committee.

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during the 5 principal growing months for crops in the county as determined by the county committee.

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens.

(d) *Waiver.* Notwithstanding the provisions of § 713.63(a) through (c), the Deputy Administrator may authorize, on a county by county basis, the use of the acreage conservation reserve for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county.

[48 FR 1683, Jan. 14, 1983, as amended at 50 FR 25694, June 21, 1985; 50 FR 43377, Oct. 25, 1985

§ 713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures should be consistent with control practices normally carried out on similar cropland in the area. Control practices are not intended to be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible with wildlife practices but before seed forms.

§ 713.65 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the minimum size requirements specified in Part 718 of this chapter is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year. The land must meet the eligibility requirements of § 713.61.

[50 FR 25695, June 21, 1985, and 50 FR 43377, Oct. 25, 1985]

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

[49 FR 13481, Apr. 5, 1984]

§ 713.67 Emergency grazing or harvesting.

ACR acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

[49 FR 13481, Apr. 5, 1984]

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State ASC committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, the requirements of § 713.61 must also be met.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

[49 FR 13481, Apr. 5, 1984]

§ 713.69 Noncrop uses or practices.

(a) The uses and practices listed in paragraph (b) of this section are eligible for ACR acreage if:

(1) Such uses and practices are installed on acreage that is otherwise eligible as provided in paragraph (a) of § 713.61 for 1982 or paragraph (b) of § 713.61 for 1983; and

(2) The requirements in §§ 713.62 and 713.63 are met.

(b) The following uses and practices are eligible ACR acreage:

(1) Trees or shrubs planted for any purpose other than orchards or vineyards;

(2) Terraces and sod waterways;

(3) Water storage developed for any purpose, including fish or wildlife habitat; or

(4) Filter strips used to reduce siltation in a stream or ditch.

§ 713.70 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in Part 718 of this chapter, producers may destroy crop acreage to do one of the following:

(a) Decrease the amount of program crop so that the ACR acreage available is sufficient; or

(b) Designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 713.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after destruction of the crop.

§ 713.71 Destroyed crop acreage.

(a) Operators may substitute acreages of small grains or row crops that were destroyed for the ACR acreage already designated and reported on Form 578. However, with respect to such substitution, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment with respect to the production from the substituted acreage;

(2) The land must be eligible as provided in § 713.61; and

(3) The land must be devoted to an approved cover or practice in accord-

ance with the provisions of § 713.62 as soon as practicable after the substitution.

(b) Substitution cannot be used to reduce a payment reduction of failure to comply fully in accordance with the provisions of Part 971 of this chapter.

§ 713.72 Provisions applicable to certain small grains.

The following provisions are applicable with respect to 1982 ACR acreage only:

(a) Acreage that was devoted to wheat or another small grain may be designated as ACR acreage and be harvested or grazed in accordance with the provisions of this section. This provision shall be applicable only as provided in an announcement by the Secretary.

(b) The crop may be harvested for hay, silage, or green chop, but not for grain. Hay may be removed from such acreage only before the disposal deadline. After haying, the acreage may then be grazed without regard to the 6-month nongrazing period established by the county committee.

(c) Grazing of livestock on ACR acreage may be permitted for the entire year. However, the acreage shall not be overgrazed so that the land is subject to wind or water erosion.

(d) If there is seeding or overseeding of a subsequent crop on the acreage, the provisions of § 713.63 with respect to other ACR acreage shall be subject to such acreage.

(e) The acreage may be planted to an eligible cover after haying or grazing. This cover may not be:

(1) Harvested; or

(2) Grazed during the remainder of the 6 principal growing months as determined by the county committee.

(f) The acreage shall be subject to the requirements for minimum size as specified in Part 718 of this chapter and the requirements for the care of ACR acreage as set forth in § 713.64.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38091, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.73 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year.

(b) The county committee determines that:

(1) The crop was not harvested because of adverse weather or other reason beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 713.74 Skip rows.

The acreage between rows of the crop is eligible ACR acreage if:

(a) The skip is at least the larger of 4 normal rows or 160 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 713.61 and use and care of the acreage as set forth in § 713.63 and § 713.64.

§ 713.75—713.99 [Reserved]

§ 713.100 Cross compliance on the farm.

(a) With respect to feed grains, rice, upland and ELS cotton, and wheat, whenever an acreage reduction program is announced for one or more such crops in a notice of determination published in the FEDERAL REGISTER, compliance on the farm with any one commodity program (feed grain, rice, upland and ELS cotton, or wheat) may not be required as a condition of eligibility for loans, purchases and payments with respect to any of the other commodity programs.

(b) With respect to feed grains, and wheat, whenever a set-aside program is announced for one or more of such crops in a notice of determination published in the FEDERAL REGISTER, compliance on the farm with any one commodity program (i.e., wheat or feed grain) may be required as a condition of eligibility for loans, purchases and payments under the other commodity programs.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38092, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.101 Offsetting compliance between farms.

Whenever offsetting compliance requirements are made applicable to a crop program for the current year as announced in a notice of determination in the FEDERAL REGISTER, the following provisions shall be applicable:

(a) To be eligible for loans, purchases, and payments authorized for a crop when an acreage reduction or set-aside program is in effect for a crop (i.e., feed grain, rice, upland and ELS cotton or wheat), the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of the crop on the farm does not exceed the acreage base for such crop.

(b) To be eligible for loans, purchases, and payments authorized for an NCA crop when compliance with the NCA is required for a crop of wheat or feed grains, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of NCA crops on the farm does not exceed the NCA on such farm.

(c) A landowner or landlord cannot escape responsibility for complying with paragraph (a) or (b) of this section by leasing for cash or other consideration all or part of a farm when the lease is executed after the notice of determination announcing any offsetting compliance requirement is published in the FEDERAL REGISTER.

(d) Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as the operator of the farm for purposes of paragraph (a) or (b) of this section when he or she receives a percentage of the gross or net farm income exceeding 10 percent of the crops or proceeds thereof for such management service.

(e) For purposes of paragraph (a) or (b) of this section, all persons or entities in each category listed below shall be considered as the same producer and fully responsible for the actions of any person or entity in that category:

(1) Husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits does not share to any degree in crops or proceeds thereof from the other farm, ownership or managerial control of the other farm is not shared by such spouse, and there have been no changes in the ownership, operation, or managerial control of the other farm which would tend to defeat the purposes of paragraph (a) or (b) of this section.

(2) Minor children and the parent, guardian, or other person legally responsible for the minor unless the person legally responsible for the minor does not occupy the same household as the minor and shares no interest in the farming operations of the minor.

(3) A partnership and a member of the partnership with over 50 percent interest in the partnership.

(4) A corporation and a stockholder with over 50 percent of the stock of such corporation.

(5) An estate and the sole heir of the estate.

(6) A trust and the sole beneficiary of the trust.

(7) Two or more corporations, estates, trusts, or any combination of such entities which have common stockholders, beneficiaries, or heirs who own more than a combined 50 percent interest in each corporation, estate, or trust.

(f) Notwithstanding the foregoing:

(1) Any person who places land in a trust the beneficary of which is such persons's parent, brother, sister, spouse, child or grandchild shall be considered the same producer as the trust for purposes of paragraph (a) or (b) of this section if he or she acts as the trustee or trust officer for the trust or in any other way retains the management responsibility for the trust land even though he or she does not receive any share of the crops or proceeds thereof from the trust land.

(2) When the State committee, or the county committee with the approval of the state committee, determines that a corporation, partnership, or trust was formed, modified or used for the purpose of circumventing paragraph (a) or (b) of the section, the corporation and any stockholder of the the corporation, the partnership and any member of the partnership, or the trust and any beneficiary of the trust shall be considered as the same pro-

ducer and fully responsible for the actions of the corporation, partnership, or trust.

(3) A landowner, landlord, or operator may be exempted from complying with paragraph (a) or (b) of this section with respect to a crop if the county committee determines that a lease which prevents compliance was executed prior to the time that a notice of determination was published in the FEDERAL REGISTER making offsetting compliance a requirement of the program for such crop.

(4) A landowner may be exempt from complying with paragraph (a) or (b) of this section if the landowner has an undivided interest in the farm that does not exceed 50 percent.

(5) A landowner, landlord, or operator may be exempt from complying with paragraph (a) or (b) of this section for the current year if that person assumed ownership or control of the land after the crop was planted for the current year.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38092, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.102 Determination of compliance.

Acreage determinations shall be made in accordance with Part 718 of this chapter, as amended.

§ 713.103 General payment provisions.

(a) *Issuance.* Payment of any amount due the operator or other producers on a farm shall be made only after the producers are determined to be in compliance with the contract and these regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in Part 791 of this chapter, as amended, payment shall not be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this subpart and in Part 718 of this chapter.

(c) *Payment due producer.* Subject to the provisions of the payment limitation regulations in Part 795 of this chapter, as amended, the total earned payment due each eligible producer under the program shall be determined by multiplying the total earned payment for the farm by the producer's share of such payment.

(d) *Payment declined.* If a producer declines to accept all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section, such payment or portions thereof shall not become available for any other producer on the farm.

(e) *Unearned payments and overpayments.* Effective with respect to determinations of overpayments made after enactment of this rule, a person shall refund to the Commodity Credit Corporation (CCC) any amounts representing payments that exceed the payments actually earned under the programs prescribed by this part. A late payment charge may be assessed in accordance with the provisions of 7 CFR Part 1403.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38091, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable, and

(ii) Request the advance payment; and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

(b) *Advance deficiency payments.* (1) *For 1982:* (i) No advance deficiency payments will be made for barley, oats, or wheat, since final payments for these crops will be made as soon as practicable after December 1, 1982.

(ii) Advance payments will be made as soon as practicable after October 1, 1982 for corn, grain sorghum, upland cotton, and rice. The amount of the advance payment shall be computed by multiplying: (A) The producer's share of the crop times; (B) the farm's program acreage of the crop times; (C) the farm's program payment yield for the crop minus; (D) the number of pounds or bushels for which a low yield payment under § 713.105 has been made times; (E) 70 percent of the projected 1982 deficiency payment rate for the crop.

(2) *For 1983 through 1985* advance deficiency payments will be made for crops as announced in a notice of determination published in the FEDERAL REGISTER. Such announcements will specify the rates and time of payment.

(c) *Advance diversion payments.* Advance diversion payments shall be made when a land diversion program is in effect for a crop if so announced in a notice of determination published in the FEDERAL REGISTER. Such announcement will specify the rates and time of payment.

(d) *Refunds.* (1) The provisions of § 713.103(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but who failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 713.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 713.103(e), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage limitation, set-aside, or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the date such payment is refunded. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38091, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985; 50 FR 25695, June 21, 1985; 50 FR 33911, Aug. 22, 1985; 50 FR 43377, Oct. 25, 1985]

§ 713.105 Disaster payments.

(a) *Eligibility for disaster payments.* Except as provided in paragraph (b) of this section, prevented planting and low yield disaster payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if:

(1) Crop insurance offered in accordance with the Federal Crop Insurance Act, as amended, is not available with respect to the producer's acreage of such commodity;

(2) The operator and other producers on the farm have entered into a contract with CCC for the applicable crop of the commodity, and have been determined to be in compliance with such contract;

(3) The operator submits an Application for Disaster Credit (herein called "Form 574") in accordance with instructions issued by the Deputy Administrator;

(4) The operator submits a report of production and disposition in accordance with § 713.6(d); and

(5) The county committee determines that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a low yield of such commodity as hereinafter described in this section because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(b) *Prevented planting*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage eligible for payment.* The acreage eligible for payment shall be only that acreage for which crop insurance under the Federal Crop Insurance Act is not available. Such acreage shall equal the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster or other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year; or

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm yield as provided in § 713.6 times the prevented planting payment rate.

(c) *Low yield*—(1) *Payment rate.* The low yield payment rate is one-third for upland cotton and rice and one-half for barley, corn, grain sorghum, oats, and wheat of the established (target) price as provided for in § 713.106.

(2) *Payment computation.* Low yield payments shall be determined for each crop by multiplying the low yield payment rate times the smaller of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of low yield disaster payments; and

(ii) Any acreage for which the production cannot be determined shall be charged with the farm yield. However, if the county committee determines that the acreage was affected by a disaster, such acreage shall be charged with the larger of 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6 or the actual average yield from the harvested acreage of the crop.

(d) *Special disaster payments.*

(1) Irrespective of whetherr crop insurance under the Federal Crop Insurance Act is available, the Secretary may make special disaster payments available to producers on a farm whenever the Secretary determines that:

(i) As the result of drought, flood, or other natural disaster, or other condition beyond the control of the producers, producers on a farm have suffered substantial losses of production either: (A) From being prevented from planting feed grains, rice, upland cotton, or wheat, or other nonconserving crop; or (B) from reduced yields, and such losses have created an economic emergency for the producers;

(ii) Federal crop insurance indemnity payments and other forms of assistance made available by the Federal Government to such producers for such losses are insufficient to alleviate such economic emergency, or no crop insurance covered the loss because of transitional problems attendant to the Federal crop insurance program; and

(iii) Additional assistance must be made available to such producers to alleviate the economic emergency.

(2) The Secretary may make such adjustments in the amounts of payments made available under this subparagraph with respect to individual farms so as to assure the equitable allotment of such payments among producers taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

(e) Disaster payments shall be made as soon as practicable after the disaster is reported, the extent of the crop loss is determined, and payment is approved.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38091, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.106 Established (target) prices.

The established prices for each crop of a commodity will be announced in a notice of determination published in the FEDERAL REGISTER.

§ 713.107 National program acreage.

Whenever an acreage reduction requirement is not in effect for a crop, a national program acreage shall be established and announced in a notice of determination published in the FEDERAL REGISTER. The national program acreage shall equal the number of harvested acres the Secretary of Agriculture estimates will produce the quantity (less imports) that will be used domestically and for export during the marketing year for such crop. The national program acreage, which is established for any crop, may later be revised if the Secretary of Agriculture determines that an adjustment is necessary based upon the latest information for the purpose of determining an allocation factor for use as provided for in § 713.108.

§ 713.108 Deficiency payments.

(a) *Basis for payment rate.* The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(1) The national average loan rate established for the crop; or

(2) The national weighted average market price received by producers for the crop during:

(i) The first 5 months of the marketing year for wheat, feed grain, and rice;

(ii) The calendar year for upland cotton; and

(iii) The first 8 months of the marketing year for ELS cotton.

(b) *Acreage for payment.* (1) The acreage for payment shall be acreage of the crop for the current year reduced by an allocation factor if no acreage reduction requirement is in effect for such crop. The allocation factor shall be determined by dividing the national program acreage for the crop, as specified in § 713.107, by the estimated national current year acreage of the crop. However, the following shall be applicable to the allocation factor:

(i) The allocation factor shall not be less than 80 percent for each of the crops of barley, corn, grain sorghum, oats, rice, and wheat;

(ii) The acreage for payment shall not be reduced by the allocation factor if the current year acreage of the crop on the farm is reduced voluntarily from the acreage base for the crop by a percentage to be announced in the notice of determination published in the FEDERAL REGISTER; and

(iii) The allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in the current year's acreage is insufficient to exempt the farm from the application of the allocation factor.

(2) If an acreage reduction requirement or required land diversion program is in effect for the crop, the acreage for payment shall be the acreage of the crop planted for harvest but not to exceed the permitted acreage.

(c) *Payment computation.* Deficiency payments shall be determined for each crop by multiplying the acreage for payment by the established farm yield as provided for in § 713.6 and by the deficiency payment rate. However, no deficiency payment shall be made for any quantity for which a low yield payment is made.

(d) *Date of payment.* Deficiency payments will be made to producers as soon as practicable after the following dates:

(1) *Barley, oats and wheat.* December 1 of the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.* April 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38901, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.109 Division of program payments.

(a) *General.* Each person on a participating farm shall be given the opportunity to participate in the program for a crop in proportion to such person's interest in the program crop or the interest such person would have had if the crop had been produced. The name of such person shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) The producer's share of the crop or the proceeds thereof, or

(2) If no crop is produced, the share which the producer would have otherwise received had the crop been produced.

Notwithstanding the foregoing sentence, a different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers cannot agree on the division. In addition, a different division of payments may be approved by the county committee when required by § 713.111 which relates to successors-in-interest.

(c) *Refund of payments not properly divided.* Payments which producers receive with respect to which they are determined not to be entitled shall be refunded to the Commodity Credit Corporation as required by § 713.103. In the event of fraud, the producer shall be subject to the provisions relating to fraudulent representation as set forth in § 713.112.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38901, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.110 Provisions relating to tenants and sharecroppers.

(a) Payment shall not be approved for the current year if the county committee determines that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless:

(A) Such tenant was living on the farm in the year immediately preceding the current year, or

(B) At least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease contract, agreement or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay over to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the pro-

gram. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine, shall be refunded to the Commodity Credit Corporation.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are now classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 713.111 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the application for payment, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations in Part 707 of this chapter, as amended.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (herein called "predecessor") is succeeded on the farm by another producer (herein called "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract and this appendix, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case where any payment due any successor producer has previously been paid to the producer who filed an application for payment, such payment shall not be paid to the successor producer unless it is recovered from the producer to whom it has been paid or payment is authorized by the Deputy Administrator.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38091, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.112 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly (1) adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to the farm and shall be liable for liquidated damages in accordance with the contract.

(c) Refunds determined to be due CCC under the provisions of this section shall bear interest at the rate specified in 7 CFR Part 1403. Such interest shall accrue from the date of disbursement to the date refunded.

(d) The provisions of this section shall be applicable in addition to any liability under criminal and civil fraud statutes.

[48 FR 1683, Jan. 14, 1983, as amended at 49 FR 38091, Sept. 27, 1984; 50 FR 11146, Mar. 20, 1985]

§ 713.113 Setoffs and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations issued by the Secretary governing setoffs and withholdings, Part 13 of this chapter, as amended, shall be applicable to the programs.

(b) *Assignments.* Any producer entitled to any payment may assign such payments in accordance with the regulations governing assignment of payment, Part 709 of this chapter, as amended.

§ 713.114 Appeals.

A producer may obtain reconsideration and review of determinations made under this subpart in accordance with the appeal regulations, Part 780 of this chapter, as amended.

§ 713.115 Performance based upon advice or action of county or State committee.

The provisions of Part 790 of this chapter, as amended, relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this subpart.

§ 713.116 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0092, 0560-0650, 0560-0091, 0560-0030, and 0560-0071.

(7 U.S.C. 1441, 1444, 1444d, 1445b-1, 1445b-2, 1445b, 1445h, 1421 note, 1501 note)

[49 FR 13481, Apr. 5, 1984]

PART 714—REFUNDS OF PENALTIES ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED

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AUTHORITY: Secs. 372, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1372, 1375.

SOURCE: 35 FR 12098, July 29, 1970, unless otherwise noted.

§ 714.35 Basis, purpose, and applicability.

(a) *Basis and purpose.* The regulations set forth in this part are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, for the purpose of prescribing the provisions governing refunds of marketing quota penalties erroneously, illegally, or wrongfully collected with respect to all commodities subject to marketing quotas under the Act.

(b) *Applicability.* This part shall apply to claims submitted for refunds of marketing quota penalties erroneously, illegally, or wrongfully collected on all commodities subject to marketing quotas under the Act. It shall not apply to the refund of penalties which are deposited in a special deposit account pursuant to sections 314(b), 346(b), 356(b), or 359 of the Agricultural Adjustment Act of 1938, as amended, or paragraph (3) of Pub. L. 74, 77th Congress, available for the refund of penalties initially collected which are subsequently adjusted downward by action of the county committee, review committee, or appropriate court, until such penalties have been deposited in the general fund of the Treasury of the United States after determination that no downward adjustment in the amount of penalty is warranted. All prior regulations dealing with refunds of penalties which were contained in this part are superseded upon the effective date of the regulations in this part.

§ 714.36 Definitions.

(a) *General terms.* In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The definitions in Part 719 of this chapter shall apply to this part. The provisions of Part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Other terms applicable to this part.* The following terms shall have the following meanings:

(1) "Act" means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(2) "Claim" means a written request for refund of penalty.

(3) "Claimant" means a person who makes a claim for refund of penalty as provided in this part.

(4) "County Office" means the office of the Agricultural Stabilization and Conservation County Committee.

(5) "Penalty" means an amount of money collected, including setoff, from or on account of any person with respect to any commodity to which this part is applicable, which has been covered into the general fund of the Treasury of the United States, as provided in section 372(b) of the Act.

(6) "State office" means the office of the Agricultural Stabilization and Conservation State Committee.

§ 714.37 Instructions and forms.

The Deputy Administrator shall cause to be prepared and issued such instructions and forms as are necessary for carrying out the regulations in the part.

§ 714.38 Who may claim refund.

Claim for refund may be made by:

(a) Any person who was entitled to share in the price or consideration received by the producer with respect to the marketing of a commodity from which a deduction was made for the penalty and bore the burden of such deduction in whole or in part.

(b) Any person who was entitled to share in the commodity or the proceeds thereof, paid the penalty thereon in whole or in part and has not been reimbursed therefor.

(c) Any person who was entitled to share in the commodity or the proceeds thereof and bore the burden of the penalty because he has reimbursed the person who paid such penalty.

(d) Any person who, as buyer, paid the penalty in whole or in part in connection with the purchase of a commodity, was not required to collect or pay such penalty, did not deduct the amount of such penalty from the price paid the producer, and has not been reimbursed therefor.

(e) Any person who paid the penalty in whole or in part as a surety on a bond given to secure the payment of penalties and has not been reimbursed therefor.

(f) Any person who paid the whole or any part of the sum paid as a penalty with respect to a commodity included in a transaction which in fact was not a marketing of such commodity and has not been reimbursed therefor.

§ 714.39 Manner of filing.

Claim for refund shall be filed in the county office on a form prescribed by the Deputy Administrator. If more than one person is entitled to file a claim, a joint claim may be filed by all such persons. If a separate claim is filed by a person who is a party to a joint claim, such separate claim shall not be approved until the interest of each person involved in the joint claim has been determined.

§ 714.40 Time of filing.

Claim shall be filed within 2 years after the date payment was made to the Secretary. The date payment was made shall be deemed to be the date such payment was deposited in the general fund of the Treasury as shown on the certificate of deposit on which such payment was scheduled.

§ 714.41 Statement of claim.

The claim shall show fully the facts constituting the basis of the claim; the name and address of and the amount claimed by every person who bore or bears any part or all of the burden of such penalty; and the reasons why such penalty is claimed to have been erroneously, illegally, or wrongfully collected. It shall be the responsibility of the county committee to determine that any person who executes a claim as agent or fiduciary is properly authorized to act in such capacity. There should be attached to the claim all pertinent documents with respect to the claim or duly authenticated copies thereof.

§ 714.42 Designation of trustee.

Where there is more than one claimant and all the claimants desire to appoint a trustee to receive and disburse any payment to be made to them with respect to the claim, they shall be permitted to appoint a trustee. The person designated as trustee shall execute the declaration of trust.

§ 714.43 Recommendation by county committee.

Immediately upon receipt of a claim, the date of receipt shall be recorded on the face thereof. The county committee shall determine, on the basis of all available information, if the data and representations on the claim are correct. The county committee shall recommend approval or disapproval of the claim, and attach a statement to the claim, signed by a member of the committee, giving the reasons for their action. After the recommendation of approval or disapproval is made by the county committee, the claim shall be promptly sent to the State committee.

§ 714.44 Recommendation by State committee.

A representative of the State committee shall review each claim referred by the county committee. If a claim is sent initially to the State committee, it shall be referred to the appropriate county committee for recommendation as provided in § 714.43 prior to action being taken by the State committee. Any necessary investigation shall be made. The State committee shall recommend approval or disapproval of the claim, attaching a statement giving the reasons for their action, which shall be signed by a representative of the State committee. After recommending approval or disapproval, the claim shall be promptly sent to the Deputy Administrator.

§ 714.45 Approval by Deputy Administrator.

The Deputy Administrator shall review each claim forwarded to him by the State committee to determine whether, (a) the penalty was erroneously, illegally, or wrongfully collected, (b) the claimant bore the burden of the payment of the penalty, (c) the claim was timely filed, and (d) under the applicable law and regulations the claimant is entitled to a refund. If a claim is filed initially with the Deputy Administrator, he shall obtain the recommendations of the county committee and the State committee if he deems such action necessary in arriving at a proper determination of the claim. The claimant shall be advised in writing of the action taken by the Deputy Administrator. If disapproved, the claimant shall be notified with an explanation of the reasons for such disapproval.

§ 714.46 Certification for payment.

An officer or employee of the Department of Agriculture authorized to certify public vouchers for payment shall, for and on behalf of the Secretary of Agriculture, certify to the Secretary of the Treasury of the United States for payment all claims for refund which have been approved.

PART 717—HOLDING OF REFERENDA

GENERAL

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MISCELLANEOUS

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717.25 Disposition of ballots and records.
717.26 Applicability.

AUTHORITY: Secs. 312(c), 317(c) and (d), 336, 343, 344a(b)(ii), 354(b), 358(b), 375(b), 52 Stat. 46, as amended, 79 Stat. 66, 52 Stat. 55, as amended, 56, as amended, 79 Stat. 1197, 52 Stat. 61, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1312(c), 1314c(c) and (d), 1336, 1343, 1344b(b)(ii), 1354(b), 1358(b), 1375(b), unless otherwise noted.

SOURCE: 33 FR 18345, Dec. 11, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 717, appear at 36 FR 12730, July 7, 1971.

GENERAL

§ 717.1 Definitions.

In determining the meaning of the provisions in this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present.

(a) *General terms.* The definitions in Part 719 of this chapter shall apply to this part. The provisions of Part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Act.* The Agricultural Adjustment Act of 1938 and any amendments or supplements thereto.

(c) *Referendum community.* For referenda conducted by mail ballot, the entire county shall be the referendum community. For referenda conducted at polling places, the referendum community shall conform with the community established by the State committee for purposes of elective areas under the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community Committees in Part 7, Subtitle A, of this Title (§ 7.7, 33 FR 12955), as amended from time to time: *Provided,* That a referendum community may be composed of an area differing from the community so established in the following cases:

(1) A referendum community may be established by the county committee, with the approval of a representative of the State committee, to conform to a political township, a local voting precinct for purposes of general elections, or a combination of such townships or precincts;

(2) A referendum community may be established by the county committee, if it determines eligible producers will be given a convenient place to vote, which consists of a combination of a community with less than 25 farms on which there are producers eligible to vote, with one or more communities; and

(3) The entire county shall be the referendum community in counties with less than 100 farms on which there are producers eligible to vote unless the county committee, with the approval of the State committee, determines that more than one referendum community is needed in the county.

The county committee shall maintain in the county office, and make available for public inspection, a descriptive list of the referendum communities established for the county for referenda conducted at polling places.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

§ 717.2 Supervision of referenda and prescribed method of balloting.

(a) *Supervision of referenda.* The Deputy Administrator shall be in charge of and responsible for conducting each referendum required by the Act. Each State committee shall be in charge of and responsible for conducting such referendum in its State. Each county committee shall be responsible for the proper holding of such referendum in its county. It shall be the duty of the Deputy Administrator and of each committee to conduct each referendum by secret ballot in a fair, unbiased, and impartial manner in accordance with this part.

(b) *Prescribed method of balloting.* Each referendum held under this part shall be by mail ballot unless the Administrator, ASCS, or the Deputy Administrator prescribes that a particular referendum shall be held at polling places.

§ 717.3 Voting eligibility.

(a) *Statutory requirements*—(1) *Tobacco quotas proclaimed on an acreage basis under section 312(a) of the Act.* Within 30 days after the proclamation under section 312(a) of the Act of national marketing quotas on an acreage basis for any kind of tobacco for the next 3 succeeding marketing years, there shall be a referendum under section 312(c) of the Act of farmers engaged in the production of the crop of such tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the 3-year period. If more than one-third of the farmers voting oppose such quotas, the quotas so proclaimed for the 3-year period shall not be in effect: *Provided,* That such referendum result shall not preclude the proclamation of national marketing quotas for such kind of tobacco for the next 3 succeeding marketing years subject to a referendum as required under this paragraph. If the referendum results in approval of quotas for the 3-year period, no further referendum applicable to such quotas shall be held (i) unless a new proclamation during the 3-year period is made pursuant to subdivision (3) of section 312(a) of the Act in which case a referendum shall be held as provided in this paragraph (a)(1)(i) of this section, or (ii) unless quotas on an acreage-poundage basis are established pursuant to section 317(c) of the Act, in which case a special referendum shall be held as provided in paragraph (a)(2) of this section.

(2) *Tobacco quotas proclaimed on an acreage-poundage basis under section 317(c) of the Act.* During the first or second marketing year of the 3-year period for which marketing quotas for any kind of tobacco are in effect on an acreage basis, if the Secretary, under section 317(c) of the Act, determines that marketing quotas on an acreage-poundage basis would result in a more effective program, at the time of the next announcement of the amount of the marketing quota on an acreage basis, the Secretary shall also announce the national acreage allotment and national average yield goal. Within 45 days after such announcement of acreage-poundage quotas there shall be a special referendum under section 317(c) of the Act of farmers engaged in the production of the kind of tobacco of the most recent crop to determine whether such farmers favor the establishment of marketing quotas on an acreage-poundage basis for the next 3 marketing years. If more than two-thirds of the farmers voting in the special referendum favor marketing quotas on an acreage-poundage basis, such quotas shall be in effect for the next 3 marketing years and the marketing quotas on an acreage basis shall cease to be in effect at the beginning of such 3-year period and no further special referendum applicable to such 3-year period shall be held. If marketing quotas on an acreage-poundage basis are not favored by more than two-thirds of the farmers voting in the special referendum, marketing quotas on an acreage basis as previously proclaimed shall continue in effect.

(3) *Tobacco quotas proclaimed on an acreage-poundage basis under section 317(d) of the Act.* If marketing quotas on an acreage-poundage basis have been made effective for a kind of tobacco, the Secretary shall proclaim a national marketing quota for such kind of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect. Such proclamation may be on an acre-

age-poundage basis or on an acreage basis. Within 30 days after such proclamation, there shall be a referendum under section 312(c) of the Act of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next 3 succeeding marketing years. If more than one-third of the farmers voting oppose such quotas, the quotas so proclaimed for the 3-year period shall not be in effect: *Provided*, That such referendum result shall not preclude the proclamation of national marketing quotas for such kind of tobacco for the next 3 succeeding marketing years under section 312(a) of the Act subject to a referendum thereon as provided in paragraph (a)(1) of this section. If a referendum results in approval of quotas for 3 marketing years on an acreage basis, no further referendum applicable to such 3 marketing years shall be held except as may be required under section 317(c) of the Act. If a referendum results in approval of quotas for 3 marketing years on an acreage-poundage basis, no further referendum applicable to such 3 marketing years shall be held.

(4) *Tobacco quotas proclaimed but disapproved in 3 successive years.* Under section 312(a)(4) of the Act, if producers have disapproved national marketing quotas for a kind of tobacco in referenda held in 3 successive years subsequent to 1952, a national marketing quota shall not be proclaimed for any marketing year within the 3-year period for which quotas were disapproved unless prior to November 10 of the marketing year, one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary to proclaim a national marketing quota for each of the next 3 succeeding marketing years.

(5) [Reserved]

(6) *Extra long staple cotton quotas.* Not later than December 15 following the proclamation of a national quota for extra long staple cotton there shall be a referendum under section 343 of the Act, of farmers engaged in the production of extra long staple cotton in the calendar year in which the referendum is held to determine whether such farmers are in favor of or opposed to the quota for the next marketing year. If more than one-third of the farmers voting in the referendum oppose the quota, such quota shall not be in effect.

(7) [Reserved]

(8) *Rice quotas.* Within 30 days after the proclamation of a national marketing quota for rice there shall be a referendum under section 354(b) of the Act of farmers engaged in the production of the immediately preceding crop of rice to determine whether such farmers are in favor of or opposed to the quota for the next marketing year. If more than one-third of the farmers voting in the referendum oppose the quota, such quota shall not be in effect.

(9) *Peanut quotas.* Not later than December 15 of each calendar year there shall be a referendum under section 358(b) of the Act of farmers engaged in the production of peanuts in the calendar year in which the referendum is held to determine whether such farmers are in favor of or opposed to marketing quotas with respect to the crops of peanuts produced in the 3 calendar years immediately following the year in which the referendum is held. If more than one-third of the farmers voting in the referendum oppose such quotas, the quotas so proclaimed shall not be in effect: *Provided*, That such referendum result shall not preclude the proclamation of quotas in the next calendar year for a 3-year period subject to a referendum as required under this paragraph. If quotas are favored, no further referendum with respect to the 3-year period shall be held.

(b) *Farmers engaged in the production of a commodity.* For purposes of referenda with respect to marketing quotas for tobacco, extra long staple cotton, rice and peanuts the phrase "farmers engaged in the production of a commodity" includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: *Provided*, That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his status as a farmer engaged in the production of the crop. In addition, the phrase "farmers engaged in the production of a commodity" also includes each person who it is determined would have had an interest as a producer in the commodity on a farm for which a farm allotment for the crop of the commodity was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable commodity regulations.

(c) *Special conditions applicable to peanuts and rice*—(1) *Peanuts*. In the case of a referendum for marketing quotas for peanuts, farmers engaged in the production of peanuts as determined under paragraph (b) of this section shall not be eligible to vote in the referendum if the farm does not have any production of peanuts subject to marketing quotas. Under section 359(b) of the Act, marketing quotas are not applicable to peanuts produced on any farm on which the acreage harvested for nuts is 1 acre or less provided the producers who share in the peanuts produced on such farm do not share in the peanuts produced on any other farm. Under section 359(b) of the Act, marketing quotas are not applicable to peanuts which it is established (i) were not picked or threshed either before or after marketing from the farm, or (ii) were marketed by the producer before drying or removal of moisture from such peanuts either by natural or artificial means for consumption exclusively as boiled peanuts.

(2) *Rice*. In the case of a referendum for a marketing quota for rice, farmers engaged in the production of rice as determined under paragraph (b) of this section shall not be eligible to vote in the referendum if the farm is not subject to marketing quotas. Under section 353(d) of the Act, marketing quotas are not applicable (i) to nonirrigated rice produced on any farm on which the acreage planted to nonirrigated rice does not exceed 3 acres, or (ii) to rice produced outside the continental United States.

(d) [Reserved]

(e) *One vote limitation*. Each person eligible to vote in a particular marketing quota referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: *Provided*, That:

(1) The individual members of a partnership shall each be entitled to one vote, but the partnership as an entity shall not be entitled to vote;

(2) An individual eligible voter shall be entitled to one vote even though he is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(3) A person shall also be entitled to vote in each instance of his capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity he is eligible to vote but the person for whom he acts as a fiduciary shall not be eligible to vote.

(f) *Joint and family interest*. Where several persons, such as members of a family, have participated or will participate in the production of a commodity under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce a commodity as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(g) *Minors*. A minor shall be entitled to one vote if he is otherwise eligible and is 18 years of age or older when he votes.

(h) [Reserved]

(i) *Interpretation*. In the case of any commodity on a farm where no acreage of the commodity is actually planted but an acreage of the commodity is regarded as planted under applicable regulations of the Department, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 2, 36 FR 12730, July 7, 1971]

§ 717.4 Register of eligible voters.

Prior to the date of the referendum a register shall be prepared by the county office manager listing the name and address of each known eligible voter. For referenda conducted at polling places a register shall be prepared for each referendum community. For referenda conducted by mail ballot the entire county is considered to be the referendum community and one register shall be prepared for the county.

HOLDING REFERENDA AT POLLING PLACES

§ 717.5 Community referendum committees.

(a) *Where one referendum is to be conducted.* Except where the entire county is to be considered a referendum community, the county committee shall designate a community referendum committee for each referendum community. Each referendum committee shall consist of at least three regular members and one alternate. The membership of the referendum committee shall be chosen from among the farmers who reside in the community and who are eligible to vote in the referendum or who are community committeemen elected pursuant to the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community committees (Part 7 of this title). The county committee shall name one member of the community referendum committee as chairman and another member thereof as vice chairman. The vice chairman shall act as the chairman in the event of the absence or incapacity of the chairman and the alternate shall serve on the committee in the place of any regular member who cannot serve. The community referendum committee shall be responsible for the proper holding of the referendum in its community in a fair, unbiased and impartial manner in accordance with this part. In counties where the entire county is treated as one referendum community, the county committee shall perform, in addition to its other duties, the duties of the community referendum committee.

(b) *Where two or more referenda are to be conducted.* Where two or more referenda are to be held in the county on the same day, the provisions of paragraph (a) of this section shall be applicable except that (1) the total number of farms on which there are producers eligible to vote in any one or more of such referenda shall be used to determine whether there are 100 or more farms on which there are producers who are eligible to vote in the referenda, and (2) each community referendum committee shall be chosen from among the farmers who reside in the community and who are eligible to vote in any of such referenda or who are community committeemen elected pursuant to the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community committees (Part 7 of this title).

§ 717.6 Place for balloting.

The county committee shall designate only one polling place for balloting in each referendum community. The polling place shall be one well known to and readily accessible to the persons in the community and shall be equipped and arranged so that each voter can mark and cast his ballot in secret and without coercion, duress, or interference of any sort whatsoever. Subject to the provisions of § 717.9(c) for absentee ballots, a farmer or producer eligible to vote, shall vote only at a polling place designated for the referendum community in which he was engaged in the production of the commodity for which the referendum is held.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 2, 36 FR 12730, July 7, 1971]

§ 717.7 Time of voting.

There shall be no voting except on the day fixed for the holding of the referendum (except as provided in § 717.9(c) in the case of absentee ballots) and the day fixed for the holding of the referendum shall be the same in all neighborhoods, communities, counties, and States. The date for holding the referendum shall be determined by the Secretary in accordance with the provisions of law applicable thereto and stated in the notice of the referendum prescribed by him. The time that polls shall be opened and closed on the date fixed for holding the referendum in the States and Puerto Rico is as follows:

State	Polls to open a.m.	Polls to close p.m.
Alabama	7:00	7:00
Alaska	8:00	6:00
Arizona	8:00	6:00
Arkansas	8:00	6:30
California	8:00	6:00
Colorado	7:00	7:00
Connecticut	8:00	6:00
Delaware	8:00	6:00
Florida	7:00	7:00
Georgia	7:00	7:00
Idaho	8:00	8:00
Illinois	8:00	6:00
Indiana	8:00	6:00
Iowa	8:00	8:00
Kansas	8:00	8:00
Kentucky	8:00	6:00
Louisiana	8:00	6:00
Maine	8:00	6:00
Maryland	8:00	6:00
Massachusetts	8:00	6:00
Michigan	8:00	8:00
Minnesota	8:00	8:00
Mississippi	8:00	6:00
Missouri	8:00	6:00
Montana	8:00	7:00
Nebraska	8:00	8:00
Nevada	8:00	6:00
New Hampshire	8:00	6:00
New Jersey	8:00	6:00
New Mexico	8:00	6:00
New York	8:00	6:00
North Carolina	7:00	7:00
North Dakota	8:00	9:00
Ohio	8:00	6:00
Oklahoma	8:00	6:00
Oregon	8:00	8:00
Pennsylvania	8:00	9:00
Rhode Island	8:00	6:00
South Carolina	7:00	7:00
South Dakota	8:00	8:00
Tennessee	8:00	7:00
Texas	8:00	7:00
Utah	8:00	6:00
Vermont	8:00	6:00
Virginia	7:00	7:00
Washington	8:00	8:00
West Virginia	8:00	8:00
Wisconsin	8:00	8:00
Wyoming	8:00	8:00
Puerto Rico	8:00	6:00

The times listed in this section shall be the local time in effect for the area in which the polling place is located.

§ 717.8 Notice of referendum.

(a) *Posting a notice.* The county committee shall give public notice of the referendum in each referendum community by posting a notice at one or more places open to the public within such community prior to the date of the referendum. Such notice shall be on a form prescribed by the Deputy Administrator and shall state the commodity or commodities and marketing year, or years, or crops for which the referendum is to be held, the location of the polling place in the community, the date of the referendum, and the hours when the polls will be opened and closed. The county executive director is authorized to sign such notice on behalf of the county committee.

(b) *Use of agencies of public information.* The county committee and community referendum committees shall utilize, to the extent practicable (without advertising expense), all available agencies of public information, including newspapers, radio, television and other means, to give persons in the county public notice of the day and hours of voting, the location of polling places, and the rules governing eligibility to vote. Such notice should be given as soon as practicable after the arrangements for holding the referendum in the county have been made.

§ 717.9 Manner of voting.

(a) *Secret ballot.* The voting in the referendum shall be by secret ballot. Each voter shall, at the time he is handed the form on which to cast his ballot, be instructed to mark his ballot form so as to indicate clearly how he votes and in such manner that no one else shall see how he votes and then to fold his ballot and place it in the ballot box without allowing anyone else to see how he voted. A suitable place where each voter may mark and cast his ballot in secret and without coercion, duress, or interference of any sort whatever, shall be provided in each polling place. Every unchallenged ballot shall be placed in the ballot box by the person who voted it. The fact that a voter fails to fold a ballot placed in the ballot box shall not invalidate it. It shall be the duty of each community referendum committee to see that no device of any sort whatever is used whereby any voter's ballot may be identified except as provided in this part in the case of a challenged ballot or an absentee ballot.

(b) *Voting by proxy prohibited.* There shall be no voting by proxy or agent, or in any manner except by the eligible voter (or the challenged voter under paragraph (d) of this section) personally depositing in the ballot box his ballot as marked by him (except as provided in the case of an absentee ballot), but a duly authorized officer of a corporation, association, or other legal entity, may cast its vote.

(c) *Absentee ballots.* Any person who will not be present on the day of the referendum in the county in which he is eligible to vote or who will be prevented from voting in person on the day of the referendum because of physical incapacity, or whose religious belief forbids him from voting on the day of the referendum, may obtain prior to the date of the referendum, one ballot from a State or county ASCS office conveniently situated for him, or from the Commodity Programs Division, ASCS, Department of Agriculture, Washington, D.C., and cast an absentee ballot. The office so issuing the ballot form shall endorse on the reverse side thereof a statement in substantially the following form identifying the place in which it was issued and the county to which it will be mailed or delivered, initialed and dated by the person issuing such form.

Issued in ——— County ——— State, or by ————— State ASCS Office, or by ————— Division, ASCS, Washington, D.C., for use in ——— County, ——— State.

The issuing office shall keep a register showing for each ballot form so issued by it to be voted absentee, the name and address to whom issued, the date of issuance, and the county and State in which the ballot is to be voted, and the name and title of the person who issued the ballot. The person to whom the ballot is issued shall mark the ballot so as to indicate clearly how he votes and place the ballot in a plain envelope which shall be marked clearly with the words "Absentee Ballot," sealed and inserted in another envelope which shall be marked clearly with the voter's name and return address, sealed and delivered, or mailed, postage paid, to the county committee for the county in which he is eligible to vote. All absentee ballots must, in order to be accepted, reach the county office for the county in which the voter is eligible to vote by not later than the hour for closing the polls in the county on the day of the referendum. No such ballot shall be counted unless the voter's name and address appear on the envelope and it is determined that he is eligible to vote.

(d) *Challenged ballots.* The community referendum committee or any member thereof shall challenge the eligibility of any person to vote in the referendum where (1) the community referendum committee or any member thereof is unable to determine that the person is eligible to vote in the referendum in the community, or (2) the community referendum committee or any member thereof has reason to believe that such person has previously voted in the referendum in another community in the same or another county in person or by mail, or (3) the person's name and address have not been entered on the register of eligible voters, prior to its delivery to the referendum committee, unless the referendum committee is satisfied that the person is eligible to vote. In every case where the eligibility of the voter is challenged, his ballot form, after being marked by the challenged person so as to show how he votes, but in such manner that no one else sees how he votes, shall be folded and placed by him (or by a member of the committee if he refuses) in an envelope, which shall then be sealed and placed in another envelope, identified with his name and address, the word "Challenged" and a statement of the reason for the challenge, and shall then be placed in the ballot box. The county committee shall make an investigation in each case of controversy or dispute regarding the eligibility of a voter to vote in the referendum. In each case of a challenged ballot the eligibility of the person to vote in the referendum shall be determined by the county committee as soon as may be possible after the polls are closed and before the time for forwarding to the State committee the county summary of ballots. If it is determined that the person whose vote was challenged is eligible to vote, the sealed envelope containing the ballot shall be placed with the challenged ballot of every other person found to be eligible to vote until all challenged ballots have been passed upon by the county committee. If it is determined that the person whose vote was challenged is not eligible, the sealed envelope shall be marked "Not eligible" and signed by a member of the county committee and shall not be opened. When all of the challenged ballots have been passed upon by the county committee, the challenged ballots which were cast by eligible voters shall be opened and tabulated on the county summary of ballots, but no disclosure shall be made as to how any particular person voted.

(e) *Ballot box.* Each polling place shall be furnished with a suitable ballot box. Any container of sufficient size so arranged that no ballot can be read or removed without breaking seals on the container will be suitable. When strip adhesive paper or corresponding seals are used on the ballot box, such seals shall be signed or initialed by the chairman or a member of the community referendum committee so that breaking or replacing the seal will so destroy or affect the identifying marks as to show that the seal has been tampered with.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

§ 717.10 Local arrangements for holding the referendum.

The county committee shall make all arrangements for the proper holding of the referendum in accordance with this part prior to the date of the referendum. The county committee shall instruct each community referendum committee concerning its duties so that each member of the committee understands his duties and the duties of the committee in all respects, with particular emphasis as to (a) issuing ballot forms, (b) challenged ballots, (c) recording votes, (d) tabulating ballots, and (e) certifying results of the referendum in the referendum community. The county executive director shall furnish each community referendum committee an adequate supply of forms prior to the time the polls in the county are opened for the acceptance of ballots, by delivering the ballot forms and the forms for the community summary of ballots to each chairman of the several community referendum committees.

§ 717.11 Issuing ballots.

The community referendum committee shall open the polling place for the issuance of ballot forms and the casting of ballots at the time designated and shall thereafter until the time when the polls are required to be closed and the casting of ballots discontinued issue a ballot to each person who is eligible to vote and applies for a ballot and to each person who claims to be eligible to vote and insists upon voting even though his eligibility to vote is challenged by a member of the committee. The community referendum committeeman who issued the ballot form shall immediately enter on the register of voters opposite the name and address of the person voting, a record of the issuance of the ballot, the casting of the ballot, and any challenge of the eligibility of the person casting the ballot. Ballot forms shall be issued and ballots placed in the ballot box while at least two members serving on the community referendum committee are physically present in the polling place and in position to see each ballot form as it is issued and each ballot as it is placed in the ballot box.

§ 717.12 Community referendum committee's canvass of ballots.

Immediately after the polls are closed, the community referendum committee shall open the ballot box and canvass the ballots cast. The canvass of the ballots shall be kept open to the public. A ballot shall be considered as a spoiled ballot if it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted on a particular question. The envelope containing the challenged ballots shall not be opened. The total number of ballots issued as shown on the register of voters shall be determined and the total number of ballots cast, including the spoiled and challenged ballots, shall be determined. The number of ballots cast in favor of and the number of ballots cast in opposition to the question on which the referendum was held shall be determined. The spoiled ballots and challenged ballots shall not be considered in favor of or against the question. If any member of the community referendum committee should see or learn how any person besides himself voted, whether or not the ballot was challenged, spoiled, or otherwise, he shall not disclose such knowledge to a fellow committeeman or any other person except in an investigation conducted under this part.

§ 717.13 Community committee's reporting and record of results of referendum.

The community referendum committee shall notify the county committee by telephone, telegraph, messenger, or in person of the preliminary count of the votes on each question and of the number of spoiled and challenged ballots, as soon as may be possible. All the spoiled ballots shall be placed in an envelope and sealed and marked with the initials of the chairman (or vice chairman) of the community referendum committee and the designation "Spoiled Ballots" followed by the number of spoiled ballots and the names of the community, the county and the State. The community referendum committee shall execute the certification as to the accuracy of the register of eligible voters and ballots cast. The community referendum committee shall then prepare and execute the community summary of ballots and post one copy thereof, as soon as it is executed, in a conspicuous place at the polling place, so that it will remain posted and accessible to the public for at least 3 calendar days after the holding of the referendum. The community referendum committee shall seal the voted ballots, including those challenged and spoiled, the register of eligible voters and ballots cast, and the community summary of ballots, in one or more envelopes appropriately identified by the names of the community, the county, and the State, and the nature of the referendum and the date on which it was held, and deliver them to the county committee not later than 9 a.m., local time, on the second calendar day after the date of the referendum, together with the unused ballot and other forms. The chairman (or vice chairman) of the community referendum committee shall be responsible for the safe delivery of such reports, ballots, and forms to the county committee.

§ 717.14 County committee's canvass of ballots.

The county committee, after the closing of the polls, shall open and canvass the absentee ballots received and determine the eligibility of each voter. If any person voting absentee is found to be ineligible to vote, or the ballot is so mutilated or marked that it is not possible to determine with certainty how the person intended to vote, such ballot shall not be counted as for or against the question in the referendum. The county committee shall meet and pass upon the challenged ballots as soon as may be reasonably possible after the challenged ballots are received from the community referendum committees, but not later than 4 calendar days after the day of the referendum. The result of the referendum in each community shall be reviewed and summarized as soon as may be reasonably possible after the records, ballots, and forms are received from the several community referendum committees. Every meeting of the county committee for the purpose of canvassing the ballots cast and reviewing and tabulating the results of the referendum shall be open to the public. No member of the county committee who learns how any person besides himself voted, whether the ballot was an absentee ballot, challenged, spoiled, or otherwise, shall disclose such knowledge to any fellow committeeman or other person except in an investigation conducted under this part.

§ 717.15 County committee's reporting and record of results of the referendum.

The county committee shall notify the State committee by telephone, telegraph, or messenger (who may be a member of the county committee), as to the preliminary count of the votes on each question and the number of challenged ballots by the several community referendum committees as soon as possible. The county committee shall, as soon as may be reasonably possible, but in no event later than 4 calendar days after the date of the referendum, have prepared and certified the county summary of ballots. Such summary shall be prepared and certified in triplicate, one copy of which shall be sent to the State committee, one copy posted for 30 calendar days in a conspicuous place accessible to the public in or near the office of the county committee, and one copy filed in the office of the county committee and kept available for public inspection. One copy of each community summary shall likewise be posted for 30 calendar days in a conspicuous place accessible to the public in or near the office of the county committee.

§ 717.16 Investigation as to correctness of summary of the referendum.

The county committee shall make an investigation in each case of a dispute or challenge regarding the correctness of the summary of the referendum in a community. No dispute or challenge shall be investigated by the county committee unless it is brought to its attention within 3 calendar days after the date on which the referendum was held. The county committee shall promptly decide the dispute or the challenge and report its findings to the State committee within 5 calendar days after the holding of the referendum and send by certified mail, or deliver in person, to the office of the State committee all voted ballots, register forms, and community summary sheets involved in the dispute or challenge.

§ 717.17 State committee's reporting and record of result of the referendum.

The State committee for each State shall notify the Deputy Administrator by telegraph or telephone as to the preliminary count of the votes in the State as soon as the preliminary results of the referendum are made known to the State committee. The county summaries of ballots shall be summarized on the State summary of ballots as soon as possible, but in no event later than 7 calendar days after the date of the referendum, unless there is a dispute or challenge regarding the correctness of the summary for any county, in which case the State committee shall complete its investigation thereof, decide the dispute or challenge, and prepare the State summary accordingly within 14 calendar days after the date of the referendum. The State summary shall be prepared in triplicate and certified to by the State executive director. The original and one copy of the State summary shall be forwarded to the Director of the ASCS Division having the responsibility for the commodity for which the referendum was held. One copy of the State summary shall be filed for a period of 5 years in the office of the State committee available for public inspection.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

HOLDING REFERENDA BY MAIL BALLOT

§ 717.18 Issuing ballots.

The county committee shall furnish each person who is eligible to vote in a particular referendum a ballot suitable for mailing back to the office of the county committee. If a person who is eligible to vote in a particular referendum is not furnished a ballot, he may obtain one during the referendum period from the office of the county committee for the county in which he is eligible to vote or from any other ASCS office where ballots are available, including the Commodity Programs Division, ASCS, Department of Agriculture, Washington, D.C. When a ballot is issued from an ASCS office other than the ASCS office in the county in which the producer is eligible to vote in a particular referendum, the issuing office shall keep a register showing to whom it was issued, the person's address, the county and State in which the ballot is to be voted, and the name and title of the person who issued the ballot.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

§ 717.19 Manner of voting.

(a) *Voting procedure.* Each person to whom a ballot is issued by mail or in person may vote in the referendum by marking the ballot so as to indicate clearly how the vote is cast, placing the ballot in a plain envelope, sealing the envelope provided by ASCS which is marked clearly with the voter's name and return address, signing the certification on such envelope or making his mark thereto (which mark shall be witnessed), sealing such envelope, and delivering or mailing the envelope to the offfice of the county committee for the county in which the person is eligible to vote.

(b) *Voting by proxy prohibited.* There shall be no voting by proxy or agent except as provided in § 717.3.

(Secs. 312, 317, 336, 343, 344, 354, 358, 375, 52 Stat. 46, as amended, 79 Stat. 66, 52 Stat. 55, as amended, 56, as amended, 79 Stat. 1197, 52 Stat. 61, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1336, 1343, 1344b, 1354, 1356, 1375)

[Amdt. 2, 36 FR 12730, July 7, 1971, as amended by Amdt. 4, 49 FR 24371, June 13, 1984]

§ 717.20 Receiving and tabulating voted ballots.

Ballots received at the county ASCS office during the referendum period shall be placed immediately in a ballot box provided by the county executive director and so arranged that ballots cannot be read or removed without breaking the seal on the container. Voted ballots received by the county committee of the county in which the voter is eligible to vote during the period established for holding a particular referendum, shall be tabulated by the county committee. A ballot shall be considered to have been received during the referendum period if (a) in the case of a ballot delivered to the county committee, it was received in the office prior to the close of the work day on the final day of the referendum period, or (b) in the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the county office prior to the start of canvassing the ballots. However, no such ballot shall be counted unless the voter signs the certification or his mark is witnessed on the returned envelope, and it is determined that he is eligible to vote in the particular referendum.

(Secs. 312, 317, 336, 343, 344, 354, 358, 375, 52 Stat. 46, as amended, 79 Stat. 66, 52 Stat. 55, as amended, 56, as amended, 79 Stat. 1197, 52 Stat. 61, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1336, 1343, 1344b, 1354, 1356, 1375)

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 4, 49 FR 24371, June 13, 1984]

§ 717.21 Canvassing voted ballots.

(a) *Time of canvassing.* The canvassing of voted ballots shall take place at the opening of the county office on the fifth day after the close of the referendum period. Ballots received after the start of tabulation, even though contained in envelopes that were postmarked prior to midnight of the final day of the referendum period, shall not be counted.

(b) *Canvassing by county committee.* The canvassing shall be in the presence of at least two members of the county committee and open to the public: *Provided,* That if two or more counties have been combined and are served by one county office, the canvassing of ballots shall be conducted by at least one member of the county committee from each county served by the county office: *Provided further,* That the State committee, or the

State executive director if authorized by the State committee, may (1) designate the county executive director and a county or State ASCS office employee to canvass the ballots and report the results, as provided in paragraph (c) and § 717.22, instead of two members of the county committee, when it is determined that the number of eligible voters for the commodity for which the referendum is being conducted is so limited that having two members of the county committee present for this function is impractical and (2) designate the county Executive Director and/or another county or State ASCS office employee to canvass ballots in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(c) *Manner of canvassing.* The canvassing of ballots shall follow the following procedure:

(1) The ballot box shall be opened;

(2) The envelopes from the ballot box shall be separated into three groups consisting of (i) unopened certification envelopes which do not have a proper signed certification, (ii) unopened certification envelopes from ineligible voters, and (iii) unopened certification envelopes from eligible voters;

(3) The unopened certification envelopes from eligible voters shall be opened and plain envelopes removed and then shuffled to preserve the secrecy of the ballots contained in such plain envelopes;

(4) The ballots shall be removed from such plain envelopes and tabulated. A ballot shall be considered as a spoiled ballot if it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted on a particular question. The spoiled ballots shall not be considered in favor of or against the question.

(5) The unopened certification envelopes which do not have a proper signed certification shall not be opened and shall not be considered in favor of or against the question.

(6) The unopened certification envelopes from ineligible voters shall be considered as challenged ballots. The county committee shall determine the eligibility of the person to vote in the referendum. If determined to be eligible such envelopes shall be handled as provided under paragraphs (c) (3) and (4) of this section. If determined not to be eligible, such envelopes shall not be opened and shall not be considered in favor of or against the question.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 2, 36 FR 12730, July 7, 1971; Amdt. 3, 38 FR 12891, May 17, 1973]

§ 717.22 Reporting and record of result of the referendum.

(a) *County committee.* The county committee shall notify the State committee by telephone, telegraph, or messenger (who may be a member of the county committee), as to the preliminary count of the votes on each question and the number of challenged ballots as soon as possible. The county committee shall, as soon as may be reasonably possible, but in no event later than 4 calendar days after canvassing of the ballots, have prepared and certified the county summary of ballots. Such summary shall be prepared and certified in triplicate, one copy of which shall be sent to the State committee, one copy posted for 30 calendar days in a conspicuous place accessible to the public in or near the office of the county committee, and one copy filed in the office of the county committee and kept available for public inspection.

(b) *State committee.* The State committee for each State shall notify the Deputy Administrator by telephone or telegraph as to the preliminary count of the votes in the State as soon as the preliminary results of the referendum are made known to the State committee. The county summaries of ballots shall be summarized on the State summary of ballots as soon as possible, but in no event later than 7 calendar days after canvassing of the ballots, unless there is a dispute or challenge regarding the correctness of the summary for any county, in which case the State committee shall complete its investigation thereof, decide the dispute or challenge, and prepare the State summary accordingly within 14 calendar days after canvassing of the ballots. The State summary shall be prepared in triplicate and certified to by the State executive director. The original and one copy of the State summary shall be forwarded to the Director of the ASCS Division having the responsibility for the commodity for which the referendum was held. One copy of the State summary shall be filed for a period of 5 years in the office of State committee available for public inspection.

[Amdt. 1, 34 FR 12940, Aug. 9, 1969]

MISCELLANEOUS

§ 717.23 Applicability of this part to Puerto Rico.

The Caribbean Area Agricultural Stabilization and Conservation Committee shall be in charge of and responsible for conducting in Puerto Rico each referendum required by the Act. Insofar as applicable, the Caribbean Area ASC Committee shall perform all the duties and assume all the responsibilities otherwise required of State and county committees as provided in this part, except that (a) the Director, Agricultural Stabilization and Conservation Caribbean Area Office shall nominate for appointment by the Caribbean Area ASC Committee the members and alternates to serve on community referendum committees and shall establish the boundaries of referendum communities in such a manner that polling places therein will be conveniently located for the farmers eligible to vote in the referendum, and (b) following the canvass of the ballots, results of the referendum shall be reported to the Caribbean Area ASC Committee.

§ 717.24 Result of referendum.

(a) *Proclamation of result.* The final and official tabulation of the votes cast in the referendum shall be made by the Deputy Administrator and the result of the referendum will be publicly proclaimed and published in the FEDERAL REGISTER. The State summaries and related papers shall be filed with such tabulation for a period of 5 years available for public inspection in the Department of Agriculture.

(b) *Unofficial announcements of result.* Each county committee is authorized to issue unofficial reports of the total "Yes" and "No" votes in its county to the press and the public. Each State committee is authorized to issue to the press and the public the unofficial result of the referendum in its State by counties as rapidly as the votes in the various counties are reported to it.

(c) *Investigations.* If the Deputy Administrator or the Secretary deems it necessary, the report of any community referendum committee, county committee, or State committee shall be reexamined and checked by such persons or agents as may be designated.

§ 717.25 Disposition of ballots and records.

The county committee shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, unopened certification envelopes, register sheets, and community summaries for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date, and the names of the county and State, and place them under lock in a safe place under the custody of the county office manager for a period of 30 calendar days after the date of the referendum. If no notice to the contrary is received by the end of such time, the voted ballots, challenged ballots, spoiled ballots, and unopened certification envelopes shall be destroyed, but the registers and community and county summary sheets and the register of absentee ballots shall be filed for a period of 5 years in the office of the county committee.

§ 717.26 Applicability.

The regulations contained in this part shall be applicable to all referenda held pursuant to the Agricultural Adjustment Act of 1938, as amended.

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Sec.
718.1 Applicability.
718.2 Definitions.
718.3 Authority for farm entry and securing information.
718.4 Committee responsibilities.
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Sec.
718.6 Determining farm operator adherence to program requirements.
718.7 Producer reliance on previous determinations.
718.8 Determining acreage for unusual cases.
718.9 Notice of measured acreage.
718.10 Redeterminations.
718.11 Adjustment of acreages.
718.12 Paperwork Reduction Act assigned numbers.

AUTHORITY: Secs. 314, 373, 374, 375, 52 Stat. 48, as amended, 65, as amended, 66, as amended; 7 U.S.C. 1314, 1373, 1374, 1375, sec. 403, 61 Stat. 932, as amended; 7 U.S.C. 1153.

SOURCE: 42 FR 2973, Jan. 14, 1977, unless otherwise noted.

§ 718.1 Applicability.

The provisions of this part apply to compliance determinations for the 1982 and subsequent crop years as authorized by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, with respect to the programs administered by the Agricultural Stabilization and Conservation Service (ASCS) through State and county committees.

[Amdt. 7, 48 FR 13960, Apr. 1, 1983 and 49 FR 20475, May 15, 1984]

§ 718.2 Definitions.

(a) *General.* As used in this part, and in all instructions, forms, and documents issued in connection therewith, the words and phrases defined in Part 719 of this chapter shall have the meanings so assigned and the terms defined in paragraph (b) of this section shall have the meanings so assigned, unless the text or subject matter otherwise requires.

(b) *Other terms.* (1) *Administrative variance.* For marketing quota crops, a prescribed amount within which the determined acreage can differ from a program requirement and still be considered as having met the program requirement.

(2) *Aerial compliance.* A technique for determining acreage and updating aerial photography using 35mm slides and approved equipment.

(3) *Allotment crop.* Any crop for which acreage allotments are established pursuant to regulations of the Department implementing Federal law.

(4) *Conservation use or set-aside acreage maintenance check.* An inspection made in addition to the regular random inspections to determine whether producers are continuing to maintain designated program acreages in accordance with program regulations.

(5) *Determined acreage.* That acreage established by a representative of the Department of Agriculture by use of official acreage, planimetry of areas on the Photograph or other photographic image or computations from scaled dimensions or ground measurements.

(6) *Director.* The Director, or Acting Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, Department of Agriculture.

(7) *Early measurement.* Determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop or land use.

(8) *Farm inspection.* An inspection by an authorized Agricultural Stabilization and Conservation Service representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

(9) *Field.* A part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

(10) *Field assistant.* Person employed to secure data necessary for ascertaining producer adherence to requirements for receiving program benefits as set forth in this chapter.

(11) *Ground compliance.* A method for determining acreage and updating aerial photography using field visits.

(12) *Ground measurement.* The distance between 2 points on the ground, obtained by actual use of a chain tape and expressed in chains and links.

(13) *Normal planting period.* That period established by the State committee and approved by the Deputy Administrator during which the crop

is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

(14) *Normal row width.* The normal distance between rows of the crop in the field, but not less than four links (approximately 32 inches).

(15) *Official acreage.* That acreage established in the office or on the farm for fields and subdivisions and entered and maintained on aerial photography.

(16) *Photocopy.* A reproduction of a portion of an aerial photographic enlargement, showing a farm or group of small farms.

(17) *Premeasurement.* Determining an acreage before planting, designating, or adjusting by planimetering a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision, then staking and referencing the area on the ground and guaranteeing the acreage when subsequent planting, designating, or adjusting is done within the staked area.

(18) *Program crops.* Field corn, grain sorghum, wheat, oats, and, if designated, barley, which are planted for other than cover or green manure or volunteer acreage of these crops which is harvested for grain. Also included as program crops are rice and upland cotton.

(19) *Random inspection.* An inspection by an authorized representative of the Agricultural Stabilization and Conservation Service of a farm selected as a part of an impartial sample to determine the producer's adherence to program requirements or to verify the farm operator's report.

(20) *Reported acreage.* The acreage furnished by the farm operator on a form prescribed by the Deputy Administrator.

(21) *Reporting date.* For the 1982 crop year, the date established by the State Committee, in accordance with the appropriate program regulation set forth in this chapter, by which a farm operator must report applicable program crop acreage. For the 1983 and subsequent crop years, the date established by the Deputy Administrator by which a farm operator must report applicable program crop acreage.

(22) *Required inspection.* An inspection by an authorized representative of the Agricultural Stabilization and Conservation Service to a farm specifically selected by application of prescribed rules to determine the producer's adherence to program requirements or to verify the farm operator's report.

(23) *Standard perimeter deduction.* The acreage considered as being used for turn area and established by application of a prescribed percentage to the area planted to the crop in lieu of measuring the turn area.

(24) *Skip-row or strip-crop planting.* A cultural practice in which strips of rows of the crop are alternated with strips of idle land or another crop.

(25) *Subdivision.* A part of a field which is separated from the balance of the field by a temporary boundary such as a cropline which could be moved easily or will likely disappear.

(26) *Tolerance.* For program crops, marketing quota crops, and peanuts, a prescribed amount within which the reported acreage can differ from the determined acreage and still be considered as correctly reported. Also, for conservation use or set-aside acreage, the prescribed amount within which the determined acreage can be less than the program requirement and still be considered as having met the program requirement.

(27) *Turn area.* The area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or endrow).

(28) *Variance.* Administrative variance as it applies to marketing quota crops and tolerance as it applies to program crops, marketing quota crops, peanuts, and conservation use or set-aside acreage.

[42 FR 2973, Jan. 14, 1977, as amended at 44 FR 26848, May 9, 1979; Amdt. 4, 44 FR 44141, July 27, 1979; Amdt. 5, 45 FR 76939, Nov. 21, 1980; Amdt. 6, 46 FR 47214, Sept. 25, 1981; 47 FR 5403, Feb. 5, 1982; Amdt. 7, 48 FR 13960, Apr. 1, 1983; 49 FR 20475, May 15, 1984]

§ 718.3 Authority for farm entry and securing information.

(a) *General.* Any authorized representative of the Agricultural Stabilization and Conservation Service shall have authority, upon presentation of written authorization if such authorization is requested by any producer interested in the farm, to:

(1) Enter any farm for the purpose of ascertaining acreage, production, or adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program administered by the Agricultural Stabilization and Conservation Service.

(2) Secure from producers, on forms prescribed by the Deputy Administrator, data which are necessary to keep current the farm records located in the county Agricultural Stabilization and Conservation Service office or which are a requirement to obtain program benefits under any mandatory or voluntary program administered by the Agricultural Stabilization and Conservation Service.

(b) *Refusal to permit farm entry.* If a farm operator refuses to permit entry for the purpose of ascertaining acreage or production or determining adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program for which such determinations are required, the county executive director shall notify the farm operator in writing as soon as possible that, unless the farm operator advises the county office within 14 days after the date of such notice that he will permit entry and inspection on the farm and pay the cost thereof, the following consequences, as applicable, will apply until such time as he permits such entry and inspection:

(1) Program benefits will be denied;

(2) The entire crop production will be considered in excess of the farm marketing quota. In addition, for tobacco, the farm operator will be required to furnished proof of disposition of:

(i) Burley and flue-cured tobacco production on his farm which is in addition to the production shown on the marketing card;

(ii) Other kinds of tobacco produced on his farm and no credit will be given for disposing of any excess tobacco other than that properly identified by a marketing card unless such excess tobacco is disposed of in the presence of a representative of the county committee according to § 718.11 of this part.

(c) *Refusal to furnish information.* If a farm operator refuses to furnish reports or data which are necessary to keep current the farm records located in the county office or which are a requirement to obtain program benefits, he will be denied program benefits until such data is furnished to the county committee.

§ 718.4 Committee responsibilities.

(a) *County committee.* The county committee shall provide for making program determinations and securing information in accordance with this part.

(b) *State committee.* (1) The State committee shall:

(i) Take any action required of the county committee which the county committee fails to take in accordance with this part.

(ii) Correct or require the county committee to correct any action taken by such committee which is not in accordance with this part.

(iii) Require the county committee to withhold taking any action which is not in accordance with this part.

(iv) In accordance with instructions issued by the Deputy Administrator:

(A) For the 1982 crop year, establish and publicize final reporting dates and normal planting periods for crops.

(B) For the 1983 and subsequent crop years, establish disposition dates from crops that are no later than the applicable final reporting dates which are established by the Deputy Administrator, establish normal planting periods for crops, and publicize all such applicable dates and periods.

(v) Require all counties to determine compliance by checking selected farms. In addition, the State committee shall determine the counties in which aerial compliance methods will prove more expensive than ground measurement and require all other counties to use aerial compliance methods.

(2) The State committee may prescribe, upon approval of the Deputy Administrator, standards for the State which deviate from the national standards prescribed in this part by establishing:

(i) A minimum row width of less than four links (approximately 32 inches) for specific crops;

(ii) A minimum area larger than 0.03 acre for tobacco or 0.1 acre for other crops and land uses for deduction or adjustment credit;

(iii) A minimum width greater than four links (approximately 32 inches) for deduction of adjustment credit;

(iv) A minimum error amount or percentage different from those prescribed in paragraph (b) of § 718.10 for redetermination cost refunds.

(c) *Approved deviations from prescribed standards.* The following deviations from prescribed standards pursuant to paragraph (b) of this section have been recommended by the State committee and approved by the Deputy Administrator:

ALABAMA

Minimum row width. Sixteen inches for peanuts.

CALIFORNIA

Deduction credit. (1) *Minimum area.* Five-tenths acre for all crops.

(2) *Minimum width.* (i) *Perimeter of field.* Ten links for all crops.

(ii) *Within the planted area.*

(A) *Row crops.* Four normal rows except when planted in a skip-row pattern.

(B) *Close-sown crops.* Twenty links.

DELAWARE

(1) *Minimum row width.* Thirty inches all crops.

(2) *Deduction credit.* Minimum width six links.

GEORGIA

Remeasurement refund. One-tenth acre.

INDIANA

(1) *Deduction credit.* (i) Minimum width of five links except 15 links for terraces, permanent irrigation, drainage ditches, and sod waterways.

(2) *Adjustment credit.* (i) *Minimum area.* Five-tenths acre for all crops and land uses except tobacco.

(ii) *Minimum width.* Five links.

(3) *Remeasurement refund.* One-tenth acre for tobacco.

IOWA

Deduction credit. (1) *Minimum width.* Seven links.

(2) *Minimum area.* Five-tenths acre.

KANSAS

Minimum row width. Thirty inches for corn and grain sorghum.

LOUISIANA

Deduction credit. Unplanted contour levees within rice fields are not eligible for deduction.

MISSISSIPPI

(1) *Deduction credit.* Minimum width of 10 links.

(2) *Adjustment credit.* (i) *Minimum area.* Total excess or deficiency or 0.3 acre, whichever is smaller, except that if the excess of deficiency is more than 0.3 acre, one plot may be less than 0.3 acre.

(ii) *Minimum width.* Twenty links.

MISSOURI

(1) *Deduction credit.* Minimum width of ten links.

NEW HAMPSHIRE

Minimum row width. Thirty inches for corn.

NORTH CAROLINA

(1) *Minimum row width.* Eighteen inches for peanuts and 30 inches for corn.

OHIO

Deduction credit. (i) Minimum width of twenty links.

(ii) Minimum area of 0.3 acre except 0.03 acre for tobacco.

(2) *Adjustment credit.* Minimum width of eight links for all crops except tobacco.

(3) *Redetermination refund.* One-tenth acre for tobacco acreage.

OKLAHOMA

Remeasurement refund. Three-tenths acre for all acreage.

OREGON

Deduction credit. Minimum width of six feet within the planted area for close-sown crops.

SOUTH DAKOTA

(1) *Deduction credit.* Minimum area of 0.5 acre.

(2) *Adjustment credit.* Minimum area of 0.5 acre.

TENNESSEE

(1) *Adjustment credit.* (i) *Minimum width.*

(A) *Row crops other than tobacco.* Four rows.

(B) *Tobacco.* (1) Along field boundary. One row.

(2) *Within planted area.* Two rows.

(3) *Redetermination refund.* One-tenth acre for tobacco acreage.

TEXAS

(1) *Deduction credit.* Minimum width of nine links.

(2) *Adjustment credit.* Minimum width of nine links.

VERMONT

Minimum row width: Thirty inches for corn for silage.

VIRGINIA

Redetermination refund. For all acreage, the larger of 0.1 acre or 10 percent of the acreage for areas of less than five acres.

WISCONSIN

(1) *Deduction credit.* Minimum width of 10 links for all crops except tobacco.

(2) *Redetermination refund.* One-tenth acre for tobacco acreage.

[42 FR 2973, Jan. 14, 1977, as amended at 42 FR 48325, Sept. 23, 1977; Amdt. 4, 44 FR 44141, July 27, 1979; Amdt. 5, 45 FR 76940, Nov. 21, 1980; Amdt. 6, 46 FR 47214, Sept. 25, 1981; 47 FR 5403, Feb. 5, 1982; Amdt. 7, 48 FR 13961, Apr. 1, 1983; 49 FR 20475, May 15, 1984]

§ 718.5 Measurement services.

(a) *General.* The county committee shall provide measurement services if the producer requests such service and pays the cost, except that requests for service shall not be accepted for determining total acreage of a crop or land use.

(1) When the request is made after:

(i) For the 1982 crop year, the date established by the State committee for accepting such requests except as provided in paragraph (a)(3) of § 718.6.

(ii) For the 1983 and subsequent crop years, the established final reporting date for the applicable crop except as provided in paragraph (a)(3) of § 718.6.

(2) When the request is made after the farm operator has furnished the county office production evidence in connection with a claim for disaster payment except as provided in paragraph (a) (1) of § 718.6.

(3) When the request is made in connection with a late filed farm operator report of acreage and evidence of (i) the existence of the crop, (ii) the use made of the crop, (iii) the lack of crop, or (iv) a disaster condition affecting the crop, is not available for inspection and acreage determinations.

(b) *Types of measurement service.* Services include, but are not limited to, measuring land and crop areas (including premeasurement) and conservation use or set-aside acreage, measuring quantities of farm-stored commodities, and appraising the yields of crops.

(c) *Guaranteeing service.* When a producer requests, pays for, and receives written notice that measurement services have been furnished, compliance with program requirements relating to the measured acreage shall be guaranteed for the current year even though an error in the measurement services is discovered in the measurement, placement of field or subdivision lines, planimetry, or computation thereof if the producer has taken action based on the service and the entire crop or land use acreage required for the farm was measured. If the producer has not taken action based on the measurement services, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) *Premeasurement.* The acreage requested to be premeasured shall not exceed the effective farm allotment for the program year for marketing quota crops, except for flue-cured tobacco. For flue-cured tobacco, the acreage requested to be premeasured shall not exceed 100 percent of the flue-cured farm acreage allotment in effect for the program year. However, 110 percent of the farm acreage allotment for flue-cured tobacco may be premeasured when the producer agrees the bottom four leaves will not be harvested and agrees to pay for a farm visit to assure compliance with this requirement. The farm shall be considered to be in compliance with the allotment or program requirement for the farm if the entire allotment or program requirement for the program year was premeasured and the crop is planted or the proper land use is within the staked area. Only the acreage measured (if less than the allotment or program requirement was premeasured and is found within such staked area) shall be guaranteed for the current program year.

[42 FR 2973, Jan. 14, 1977, as amended at 42 FR 48325, Sept. 23, 1977; Amdt. 4, 44 FR 44141, July 27, 1979; Amdt. 5, 45 FR 76940, Nov. 21, 1980; Amdt. 7, 48 FR 13961, Apr. 1, 1983; 49 FR 20475, May 15, 1984]

§ 718.6 Determining farm operator adherence to program requirements

(a) *Farm operator report.* A report of acreage, land use, production, and other program requirements shall be furnished to the county committee by the farm operator not later than:

(1) For the 1982 crop year, the date established in accordance with paragraph (b) of § 718.4.

(2) For the 1983 and subsequent crop years, the applicable final reporting date established by the Deputy Administrator which is publicized by, and available at, the applicable State and County ASCS Office. The report shall be used for determining program eligibility and benefits, except as otherwise provided for under this part. The report shall be on forms prescribed and in accordance with instructions issued by the Deputy Administrator.

(3) *Accepting a late-filed report.* A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to:

(i) The existence of the crop,

(ii) The use made of the crop,

(iii) The lack of crop, or

(iv) A disaster condition affecting the crop.

The farm operator shall pay the cost of a farm visit by an authorized Agricultural Stabilization and Conservation Service employee unless the county committee determines that the producer's failure to file the farm operator's report was caused by a condition beyond the producer's control.

(4) *Revised report.* The farm operator may revise a report of acreage to alter the acreage reported. Revised reports shall be filed in accordance with instructions issued by the Deputy Administrator and shall be accepted:

(i) At any time for all crops and land use if evidence exists for inspection and determination of:

(A) The existence of the crop,

(B) The use made of the crop,

(C) The lack of crop, or

(D) A disaster condition affecting the crop; and

(ii) Until the time that production evidence is furnished to the county office for upland cotton and rice yield purposes, to reflect the fact that the harvested acreage is less than the planted acreage.

(b) *Farm inspections.* A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of the Agricultural Stabilization and Conservation Service to ascertain the acreage or production or to determine adherence to any requirement specified as a prerequisite for obtaining program benefits.

(c) *Variance rules applicability.* There are no variances when the total acreage of a program crop, marketing quota crop, peanuts, or conservation use or set-aside acreage requirement is determined using measurement service prior to planting or where a farm operator reports a marketing quota crop acreage in excess of the effective farm allotment. For farms using measurement service with respect to an acreage which is less than the total acreage of a program crop, marketing quota crop, peanuts, or conservation use or set-aside acreage requirement, the variances shall apply only to the acreages for which measurement service was not furnished. Variances apply to the total acreage of a program crop, marketing quota crop, peanuts, or conservation use or set-aside acreage requirement for which measurement services are furnished after planting but before the operator reports the acreage which meets the specifications as provided in paragraphs (c) (1) and (2) of this section. Variances apply to the adjusted acreage for farms using measurement service after planting but before the operator reports the acreage and which have a determined acreage greater than the marketing quota crop allotment, permitted program crop acreage, or an acreage less than the conservation use or set-aside acreage by more than the applicable variance rule prescribed in paragraph (c)(1) or (c)(2) of this section.

(1) *Administrative variance.* Administrative variance is applicable to all marketing quota crop acreages. Marketing quota crop acreages as determined in accordance with this § 718.6 shall be deemed in compliance with the effective farm allotment or program requirement (110 percent of the effective farm allotment for flue cured tobacco when agreement is made to leave four lower leaves unharvested) when determined acreage does not exceed the effective farm allotment by more than the larger of 0.1 acre or 2 percent of the allotment.

(2) *Tolerance.* The irrigated and nonirrigated acreage of a crop reported on the same farm shall be considered separately in applying the tolerance when separate yields have been established. Tolerance is applicable to individual crop acreages or program requirements, and shall be considered to have been met if the determined acreage for:

(i) A program crop, ELS cotton, and peanuts does not differ from the reported acreage by more than the larger of:

(A) 1.0 acre or 5 percent of the reported acreage for the 1982 crop year, and

(B) 1.0 acre or 5 percent of the reported acreage, not to exceed 50 acres, for the 1983 and subsequent crop years;

(ii) Conservation use or set-aside acreage is not less than the requirement by more than the larger of:

(A) 1.0 acre or 10 percent of the required acreage for the 1982 crop year, and

(B) 1.0 acre or 5 percent of the required acreage, not to exceed 50 acres, for the 1983 and subsequent crop years;

(iii) Tobacco other than flue-cured or burley does not exceed the allotment by more than the larger of 0.1 acre or 5 percent of the effective allotment, except that if the administrative variance is exceeded, such acreage of tobacco must be adjusted to the farm acreage allotment in order to avoid marketing quota penalties.

(d) *Official acreage.* If an acreage has been established by a representative of the Agricultural Stabilization and Conservation Service for an area delineated on an aerial photograph, such acreage will be recognized by the county committee as the official acreage for the acrea until such time as the boundaries of such area are changed. When the boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until the boundaries are verified by an authorized representative of the Agricultural Stabilization and Conservation Service.

(e) *Measurement of row crops.* Measurements of any row crop shall extend beyond the planted area by a distance equal to the larger of two links (approximately 16 inches) or one-half the distance between the rows.

(f) *Rule of fractions*—(1) *Tobacco.* The acreage of each field or subdivision computed for tobacco shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre.

(2) *Other crops and land used.* The acreage of each field or subdivision computed for land uses or crops, except tobacco, shall be recorded in acres and tenths of an acre, dropping all hundredths of an acre.

(g) *Acreage considered as devoted to a crop or land use.* The entire acreage of a field or subdivision devoted to a crop or land use shall be considered as devoted to the crop or land use subject to any allowable decuction or adjustment credit under this paragraph except as otherwise provided in this part.

(1) *Acreages of row crops planted in skip-row patterns*—(i) *Crops planted in strips of two or more rows alternating with idle land.* The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than eight links (approximately 63 inches) in width. If the strips of

idle land are at least eight links (approximately 63 inches) in width, only the acreage of the strips planted to the crop, including the larger of one-half the distance between the rows of the crop or two links (approximately 16 inches) beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(ii) *Crop being measured alternating with another crop.* The entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than eight links (approximately 63 inches) in width. However, if the strips of the other crop are at least eight links (approximately 63 inches) in width, and if such other crop:

(A) Has substantially the same growing season as the crop being measured, only the acreage planted to the crop being measured, including the smaller one-half the distance between the strips of the crop being measured or four links (approximately 32 inches), shall be considered as being devoted to the crop being measured.

(B) Does not have substantially the same growing season as the crop being measured, determine the acreage of the crop being measured in accordance with paragraph (g)(1)(i) of this section.

(iii) *Crops planted in single wide rows.* The entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than eight links (approximately 63 inches). If the distance between the rows of the crop is at least eight links (approximately 63 inches), only eight links (approximately 63 inches), in width for each row shall be considered as being devoted to the crop.

(2) *Deductions.* Any continuous area which is not devoted to the crop or land use being measured and which is not part of a skip-row pattern under paragraph (g)(1) of this section shall be deducted from the acreage of the crop or land use if such area meets the following minimum national standards or requirements:

(i) *Minimum width requirement.* Four links (approximately 32 inches).

(ii) *Minimum area requirement*—(A) *Tobacco*—Three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways each of which is at least four links (approximately 32 inches) in width may be combined to meet the 0.03-acre minimum requirement.

(B) *All other crops and land uses.* One-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways each of which is at least four links (approximately 32 inches) in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State under paragraph (b)(2) of § 718.4.

(iii) *Standard perimeter deduction.* A standard perimeter deduction of three percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas. The county committee may use, upon approval by the State committee, a different percentage when the three percent or zero percent deduction does not adequately reflect the normal cultural practice in the county.

(3) *Adjustment credit.* Acreage may be adjusted for the purposes of program compliance as provided for in § 718.11 of this part only when the areas on which the land use is altered are of reasonable shape and of reasonable number. In addition one of the following criteria must be met:

(i) The area must be at least four links (approximately 32 inches) in width and contain at least 0.03 acre for tobacco or 0.1 acre for all other crops and land uses. If an area was ineligible for deduction, it may be enlarged to meet these minimum requirements for adjustment credit.

(ii) An entire field or subdivision is adjusted.

(iii) The area being adjusted constitutes the total excess or deficient acreage of the crop or land uses for the farm.

(iv) The area being adjusted is the remaining area required for adjustment after adjusting entire fields or subdivisions.

(h) *Conservation use or set-aside acreage.* Producers on farms participating in the acreage reduction program shall designate eligible conservation use or set-aside acreage for such farms, whichever is applicable, that meets the minimum size and width requirements of this paragraph.

(1) For the 1982 crop year, the conservation use or set-aside acreage shall be designated no later than:

(i) The established final date for reporting fall-seeded crops when:

(A) The conservation use or set-aside acreage is devoted to wheat, barley, or oats on or before January 29, 1982, or

(B) The producer on the farm has not filed an intention to participate in a program for a spring or summer-seeded crop.

(ii) The established final date for reporting the latest spring-seeded crop when the producer on the farm has filed an intention to participate in a program for a spring or summer-seeded crop, unless the conservation use or set-aside acreage is devoted to wheat, barley, or oats on or before January 19, 1982.

(2) For the 1983 and subsequent crop years, the conservation use or set-aside acreage shall be designated no later than:

(i) The established final date for reporting small grains when:

(A) The conservation use or set-aside acreage is devoted to a small grain, or

(B) The producer on the farm has not filed an intention to participate in a program for a spring or summer-seeded crop.

(ii) The established final date for reporting the latest spring-seeded crop when the producer on the farm has filed an intention to participate in a program for a spring or summer-seeded crop unless the conservation use or set-aside acreage is devoted to a small grain.

(3) Minimum size and width requirements for conservation use or set-aside acreage for the 1982 and subsequent crop years. The area offered for designation must meet the following minimum requirements:

(i) Minimum size of:

(A) 1.0 acre for the 1982 crop year, and

(B) 5.0 acres for the 1983 and subsequent crop years.

(ii) Minimum average width of 1.0 chain (66 feet) wide.

(4) Exceptions to the minimum size and width requirements for conservation use or set-aside acreage for the 1982 and subsequent crop years. Areas that do not meet the minimum size and width requirements may be accepted when the area offered is:

(i) An entire field. The following areas meet the definition of a field as provided for in § 718.2(b)(9):

(A) An established stripcropping strip.

(B) The skips in an acceptable skip row pattern if at least the larger of 4 rows of normal width or 160 inches from planted row to planted row of conservation use or set-aside acreage alternate with strips of a crop.

(C) Land between terraces (terrace to terrace), or between a terrace and other field boundaries.

(ii) Land which is used to promote highway safety or will improve highway scenery.

(iii) A small or irregular area of cropland along a stream or drainage ditch, if the area is devoted to a vegetative cover such as a filter strip which is used to reduce the siltation of a stream or ditch.

(iv) Land between rows of trees or vines in orchards or vineyards.

(5) Exceptions to the minimum size and width requirements for conservation use or set-aside acreage for the 1982 crop year only. An area that does not meet the minimum size and width requirements may be accepted when the area offered is designated by the producer on ASCS records across the entire width or length of a field (designations across more than one dimension of a field must meet minimum size and width requirements in paragraph (h)(3) of this section) and represents:

(i) The total conservation use or set-aside acreage requirement, or

(ii) The balance of the conservation use or set-aside acreage requirement after other designations have been made that meet the minimum size and width requirements in paragraph (h)(3) of this section or are otherwise excepted in paragraph (h)(4) of this section.

(6) Additional exceptions to the minimum size and width requirements for conservation use or set-aside acreage for the 1983 and subsequent crop years. Areas that do not meet the minimum size and width requirements may be accepted when the area offered is land which is:

(i) Used for water storage.

(ii) Planted with trees or shrubs for any purpose other than orchards, vineyards, or nursery stock.

(iii) Used as a sod waterway or terrace.

(iv) Used for a wildlife food plot or habitat.

(v) The only area designated, excluding those areas excepted in paragraph (h)(4) or (6)(i), (ii), (iii), and (iv) of this section, that does not meet the minimum requirements in paragraph (h)(3) of this section.

[42 FR 2973, Jan. 14, 1977, as amended at 42 FR 48325, Sept. 23, 1977; 44 FR 26849, May 9, 1979; Amdt. 4, 44 FR 44142, July 27, 1979; Amdt. 5, 45 FR 76940, Nov. 21, 1980; Amdt. 7, 48 FR 13961, Apr. 1, 1983; 49 FR 20475, 20476, May 15, 1984]

§ 718.7 Producer reliance on previous determinations.

If in determining his acreage, a producer relies in good faith on an acreage previously determined by an employee of the Agricultural Stabilization and Conservation Service (except acreage determined from data furnished by the producer) and the acreage is subsequently determined by the county committee to be incorrect, the county committee shall consider the acreage on which the producer relied to be correct for that program year upon obtaining satisfactory proof from the producer that he relied in good faith upon the incorrect determination. However, the county committee may use the correct data if the producer would be adversely affected by an error in producer service provided under § 718.5 of this part.

§ 718.8 Determining acreage for unusual cases.

To assure uniform and equitable treatment when unusual cases cannot be handled equitably under this part, the Deputy Administrator shall provide, as necessary, methods for determining the proper acreage in the following groups of unusual cases:

(a) *Reliance by the farm operator on erroneous advice.* The farm operator has acted in good faith in reliance upon erroneous advice given by a representative of the State or county committee who is authorized to furnish information concerning the determination of acreage.

(b) *Practices which tend to defeat program purposes.* Any method of planting the crop or any method of adjusting the crop or land use acreage which tends to defeat the program purposes.

(c) *Cases not otherwise provided for.* Other situations or planting patterns which are not otherwise provided for in this part.

§ 718.9 Notice of measured acreage.

Written notice of measured acreage shall be on a form prescribed by the Deputy Administrator and shall constitute notice to all interested producers on the farm. The county committee shall furnish such notice to each farm operator when a farm is measured, remeasured, or checked for adjustment credit.

[Amdt. 4, 44 FR 44142, July 27, 1979]

§ 718.10 Redeterminations.

(a) *General.* A redetermination of crop and land use acreage appraised yield or farm stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 days after the date of the notice furnished the farm operator in accordance with § 718.9 of this part or within five days after the initial appraisal of the yield of a crop or before any of the farm stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination. The redetermination is final and is not appealable under Part 780 of this chapter.

(b) *Refund of producer payment of cost for redetermination.* The county committee shall refund the payment of the cost for redetermination when because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or five pounds for cotton;

(ii) Five percent or one bushel for wheat, barley, and rice;

(iii) Five percent or two bushels for corn and grain sorghum.

(2) The farm stored production is changed by at least the smaller of three percent or 600 bushels.

(3) The acreage of the crop or land use is:

(i) Changed by at least the larger of three percent or 0.5 acre, or

(ii) Considered to be within program requirements.

(c) *Notice to farm operator.* The county committee shall notify, in writing, the farm operator of its redetermination. Such notice shall constitute notice to all interested producers on the farm.

[42 FR 2973, Jan. 14, 1977, as amended at 42 FR 48325, Sept. 23, 1977]

§ 718.11 Adjustment of acreages.

(a) *General.* The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) who elects to adjust an acreage of the crop in order to become eligible for program benefits must:

(1) Notify the county committee of such election within 15 days of notification of measured acreage by the county committee as provided in § 718.9, and

(2) Pay the cost of a farm visit to determine the adjusted acreage by no later than the date such farm visit is made.

The adjusted acreage shall be used for program purposes except that if the requirements of this section are not met, the acreage initially determined shall be considered as the appropriate crop acreage for the farm.

(b) *Tobacco other than flue-cured or burley.* The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of the Agricultural Stabilization and Conservation Service and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

(c) *Conservation use or set-aside acreage.* No acreage adjustments shall be allowed for conservation use or set-aside acreage when the acreage determined from a farm inspection is less than the program requirement.

[Amdt. 7, 48 FR 13963, Apr. 1, 1983 and 49 FR 20475, May 15, 1984]

§ 718.12 Paperwork Reduction Act assigned numbers.

Information collection requirements contained in this Part 718 have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560-0004.

[49 FR 20476, May 15, 1984]

PART 719—RECONSTITUTION OF FARMS, ALLOTMENTS, NORMAL CROP ACREAGE AND PRECEDING YEAR PLANTED ACREAGE

Sec.

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719.14 Transfer of allotments and normal crop acreage—State public lands.

AUTHORITY: Secs. 375, 378, 379, 52 Stat. 66, as amended, 72 Stat. 995, as amended, 79 Stat. 1211, 7 U.S.C. 1375, 1378, 1379; secs. 601, 602, 706, 79 Stat. 1206, as amended, 1210, 7 U.S.C. 1801 note, 1838, 1305; sec. 105, 84 Stat. 1368, 87 Stat. 230, 7 U.S.C. 1441 note, 7 U.S.C. 1281 note, 91 Stat. 913; sec. 1001, 91 Stat. 950 (7 U.S.C. 1309), unless otherwise noted.

SOURCE: 44 FR 5382, Jan. 26, 1979, unless otherwise noted.

§ 719.1 Applicability.

The provisions of this part apply to reconstitution of farms, allotments, normal crop acreage and preceding year planted acreage for 1978-1979 and subsequent years under any program administered by the Agricultural Stabilization and Conservation Service through State and county committees.

§ 719.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *Allotment.* Acreage allocated to a farm for a year for ELS cotton, peanuts, rice, or tobacco, pursuant to the Agricultural Adjustment Act of 1938, as amended, the Agricultural Act of 1949, as amended, and the Food and Agriculture Act of 1977.

(b) *Combination.* Consolidation of two or more farms or parts of farms into one farm.

(c) *Committees*—(1) *Community committee.* Persons elected within a community as the community committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees in Part 7 of Subtitle A of this title.

(2) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees in Part 7 of Subtitle A of this title, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

(3) *State committee.* Persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

(d) *County.* County or parish of a State except that for Alaska, Puerto Rico and the Virgin Islands, county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

(e) *County Executive Director.* Person employed by the county committee to execute the policies of the county committee and be responsible for day-to-day operations of the ASCS county office or the person acting in such capacity.

(f) *Cropland.* Land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest.

(2) Has been tilled and is currently devoted to legumes or grasses which were established by a producer.

(3) Is not currently tilled but can be established that the land has been

tilled in a prior year and is suitable for crop production.

(4) Has been tilled and is currently devoted to vineyards, orchards, or one-row shelter belt planting (excluding abandoned orchards or vineyards).

(5) Is preserved as cropland under § 719.10. Land classified as cropland shall be removed from such classifications upon a determination by the county committee that the land is (i) removed from agricultural production; (ii) no longer suitable for production of crops; (iii) devoted to trees (other than orchards or one-row shelter belt plantings) which were planted in the preceding year except that land planted to trees in the fall of the preceding year will retain its cropland classification for the succeeding year; or (iv) no longer preserved as cropland under the provisions of § 719.10 and does not meet the conditions in paragraphs (f) (1) through (4) of this section.

(g) *Current year.* Calendar year for which the applicable allotment, base acreage, history acreage, normal crop acreage, yields, marketing quota penalties, or other program determinations are established or considered.

(h) *Department.* U.S. Department of Agriculture.

(i) *Deputy Administrator.* Deputy Administrator, or acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(j) *Division.* Dividing a farm into two or more farms or parts of farms.

(k) *Farm number.* Serial number assigned to a farm by the county committee for the purpose of identification.

(l) *Federally-owned land.* Land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

(m) *Landlord.* A person who rents or leases farmland to another person.

(n) *Normal crop acreage.* The total acreage of crops designated in accordance with 7 CFR 792.2.

(o) *OGC representative.* Appropriate Regional Attorney or Attorney-in-Charge, Office of the General Counsel, U.S. Department of Agriculture, or other authorized representative of the Office of the General Counsel.

(p) *Operator.* Person who is in general control of the farming operations on the farm during the program year.

(q) *Owner.* A person who has legal ownership of farmland, including a person who is buying farmland under a purchase agreement.

(r) *Person.* Individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(s) *Preceding year.* Calendar year immediately preceding the current year.

(t) *Producer.* Person who, as owner, landlord, tenant or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof.

(u) *Reconstitution.* Change in the land constituting a farm as a result of combination or division.

(v) *Representative of the State committee.* Member of the State committee or any employee of the State committee.

(w) *Secretary.* Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is delegated to act in his stead.

(x) *Sharecropper.* A producer who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for his labor.

(y) *State Executive Director.* Person employed by the State committee to execute the policies of the State committee and to be responsible for the day-to-day operations of the State ASCS office, or the person acting in such capacity.

(z) *Tenant.* (1) A person usually called a "cash tenant", "fixed-rent tenant", or "standing-rent tenant" who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or (2) a person (other than a sharecropper) usually called a "share tenant" who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator if he does not have control of the farm operation.

(aa) *Representative of the county committee.* A member of the county committee or any employee of the county committee.

§ 719.3 Farm constitution.

(a) *Farms constituted under prior regulations.* Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (d) of this section

(b) *Farms constituted for the first time or reconstituted hereafter.* With respect to the constitution and identification of land as a farm for the first time or the reconstitution of farms made hereafter, a farm shall include all land operated by one person as a single farming unit except that it shall not include land under any of the following conditions:

(1) Land under separate ownership unless the owners agree in writing;

(2) Field-rented tracts under a short-term agreement of 1 year or less (such tracts shall remain with the farm of which they are a part);

(3) Land across county lines when the allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or transfer by owner. However, this paragraph shall not apply if all of the land is owned and operated by one person and all such land is contiguous.

(4) Federally-owned land except land acquired by an agency having the right of eminent domain and leased back to the former owner with uninterrupted possession.

(5) Federal- and State-owned wildlife land unless the former owner has possession of the land under a leasing agreement.

(6) Land constituting a farm which is declared ineligible to participate in a program under the regulations governing the program.

(c) *Location of farm for administrative purposes.* (1) If all land in the farm is located in one county, the farm shall be administratively located in such county.

(2) If the land in the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county (i) where the principal dwelling is situated, or (ii)) where the major portion of the farm is located if there is no dwelling.

(3) Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, if the land in the farm is part of an Indian reservation and is operated by a grazing association, the farm may be administratively located in the county where such grazing association has its headquarters if the county committee involved and the farm operator agree to such location, provided the persons using the land do not reside thereon and the geographic features are such that administrative access would be more practical.

(d) *Required reconstitutions.* A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) of this section: *Provided,* That no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that his land no longer be included in a farm which is composed of tracts under separate ownership.

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator; or

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit.

(6) An owner of a farm, constituted as a single farming unit prior to 1978,

which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located.

(Sec. 379, Pub. L. 75-430, 52 Stat. 66, as added sec. 707, Pub. L. 89-321, 79 Stat. 1211, as amended sec. 404(4), 605(2), Pub. L. 91-524, 84 Stat. 1366, 1378 (7 U.S.C. 1379); sec. 316, Pub. L. 75-430, 52 Stat. 66, as added Pub. L. 87-200, 75 Stat. 469, as amended 1314(b); sec. 358a, Pub. L. 75-430, 52 Stat. 66, as added Pub. L. 90-211, 81 Stat. 658, as amended (7 U.S.C. 1358a))

[44 FR 5382, Jan. 26, 1979, as amended by Amdt. 1, 46 FR 48630, Oct. 2, 1981; 47 FR 9981, Mar. 9, 1982]

§ 719.4 Guides for determining the land constituting a farm.

(a) *General.* In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. A brief explanation of these provisions is outlined in this section to assist committees in properly determining what land is to be included in a farm.

(b) *Ownership.* The county committee shall require specific proof where there is doubt as to ownership.

(c) *Family members.* Land owned by different members of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(d) *Parent corporations and subsidiaries.* All land which is operated as a single farming unit and which is owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the value of the outstanding stock (or which is owned and operated by such subsidiary corporations) shall be constituted as one farm.

(e) *Single farming unit.* Land which the committee determines is being operated by one person with cropping practices, equipment, labor, accounting system, and management substantially separate from that of any other unit shall be considered to constitute a single farming unit.

(f) *Operation.* In determining the constitution of a farm, the county committee shall satisfy itself that the operator will be in general control of the farming operations on the farm for the program year.

§ 719.5 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator of the farm. Any request for a farm reconstitution shall be filed with the county committee. The county committee shall act on each proposed reconstitution. All interested operators shall be notified of the action taken by the county committee. All interested owners shall also be notified provided the State committee determines such notification is desirable and this policy is applicable to all counties in the State. If the proposed reconstitution is approved, the notice shall show the program year in which the reconstitution will become effective for each allotment, normal crop acreage, preceding year planted acreage, and program.

§ 719.6 Farm corporations and trusts.

Whenever the county committee believes a farm corporation(s) or trust(s) is formed primarily for obtaining additional program benefits under Title 7, the farm(s) shall not remain as constituted, or be reconstituted, when owned and operated (without the approval of the State committee and concurrence by the Deputy Administrator) by:

(a) A corporation(s) having more than 50 percent of the stock owned by members of the same family living in the same household; (b) corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; (c) trusts in which the beneficiaries and the trustee are family members living in the same household.

§ 719.7 Reconstitution of farm allotments, history acreages, normal crop acreage and preceding year planted acreage.

(a) *When to reconstitute.* Farms shall be reconstituted as soon as it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred. For each farm reconstituted, the farm allotments, history acreages, normal crop acreage and preceding year planted acreage shall also be reconstituted in accordance with the provisions of this part. County office records shall be corrected as necessary to reflect properly the basic data for each farm as reconstituted.

(b) *Effective date of reconstitutions.* The effective date of the reconstitution shall be as follows:

(1) *Allotment crops, normal crop acreage, preceding year planted acreage.* (i) The reconstitution shall be effective for an allotment crop and other crops included in the normal crop acreage for the current program year if such reconstitution is initiated before such crop is or would have been planted.

(ii) The reconstitution shall be effective for an allotment crop, normal crop acreage, preceding year planted acreage for the current program year (A) if such reconstitution is initiated after such crop has been or would have been planted, and (B) if there was a bona fide change in operation before the planting period; the land involved is owned by one person; and the reconstitution would be required under this part had the facts been known by the county committee before the planting period: *Provided, however,* That where the change in operation was solely the addition of one or more operators, the reconstitution shall not be effective for the current program year if the county committee determines that an adverse effect to the program will result.

(iii) The reconstitution may be made effective for the current program year even though the reconstitution is initiated after the crop has been or would have been planted if the county committee determines that no adverse effect to the program will result and the farm owner(s) and operator(s) agree to make the reconstitution effective for such year.

(2) *Agricultural Conservation Program.* The reconstitution shall not be effective for purposes of the Agricultural Conservation Program (ACP) for the current program year if the county committee has approved cost-sharing for a producer on the farm for the current program year unless (i) the parent farm on which cost-sharing was approved was not properly constituted at the time of approval, or (ii) the county committee determines that some producer on the farm would not be eligible to participate in the ACP if the reconstitution is not made effective.

(3) *Misrepresentation.* Notwithstanding any other provision of this section, if the county committee determines that the farm was or was not reconstituted because of a misrepresentation by a producer, the farm shall be properly reconstituted, and the effective date of such reconstitution for all purposes shall be retroactive to the date the farm was improperly constituted.

(c) *Maximum and minimum provisions, adjustments, and release and reapportionments.* Allotments and normal crop acreage for reconstituted farms resulting from the divisions or combinations of parent farms in accordance with this part are subject to maximum and minimum allotment and normal crop acreage provisions and to adjustments from allotment and normal crop acreage reserves for the commodity and released farm allotments as provided in the regulations governing the determination of allotments for the commodity.

(d) *Continuous application.* Where a farm reconstitution for the current year is made before the current year's allotments, normal crop acreage and preceding year planted acreage are determined, the history acreages and other basic data for the reconstituted farms shall be used to establish the current year's allotments, normal crop acreage and preceding year planted acreage: *Provided,* That where the current year's preliminary allotment on one or more parent farms involved in a proposed combination would be reduced for underplanting, the allotment shall be determined as follows:

(1) The current year's allotment for each parent farm shall be established separately, and then (2) the current year's allotment for the combined farm shall be determined by adding the allotments established for the parent farm.

§ 719.8 Rules for determining allotments, normal crop acreage, and preceding year planted acreage *where* reconstitution is made by division.

The methods for dividing allotments, normal crop acreage and preceding year planted acreage in order of precedence, when the method applies, are estate, designation by landowner, contribution (including contribution-cropland and contribution-history), cropland, and history.

(a) *Estate method.* The estate method is the proration of the allotments, normal crop acreage and preceding year planted acreage for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, normal crop acreage and preceding year planted acreage for the tract shall be determined by using one of the methods provided in paragraphs (b) through (f) of this section. The allotments, normal crop acreage and preceding year planted acreage shall be divided among the heirs in settling an estate by dividing the farm among two or more heirs as follows:

(1) In accordance with a will if the county committee determines that the terms of the will are such that division can reasonably be made by the estate method.

(2) If the provisions of paragraph (a)(1) of this section are not applicable, the allotments, normal crop acreage and preceding year planted acreage shall be apportioned in the manner agreed to in writing by all interested heirs. An agreement by the administrator or excecutor shall not be accepted in lieu of an agreement by heirs.

(3) If the provisions of paragraphs (a) (1) and (2) of this section do not apply, the allotments, normal crop acreage and preceding year planted acreage shall be divided pursuant to paragraphs (c) through (f) of this section, as applicable.

(b) *Designation of allotments, normal crop acreage and preceding year planted acreage by landowner.* (1) If the ownership of a tract of land is transferred from a parent farm, the county committee shall at the request of the transferring owner divide the allotments, normal crop acreage and preceding year planted acreage between the parent farm and the transferred tract, or between the applicable tracts if the entire farm is sold to two or more purchasers, in the manner designated by the owner of the parent farm subject to conditions set forth in paragraph (b)(4) of this section.

(2) If the county committee determines that the allotments, normal crop acreage and preceding year planted acreage cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (b)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (b)(4) of this section. If the owner does not furnish a revised designation of allotments, normal crop acreage and preceding year planted acreage within a reasonable time after such notification or if the revised designation does not meet the conditions of paragraph (b)(4) of this section, the county committee shall make the proration of allotments, normal crop acreage and preceding year planted acreage in accordance with paragraphs (c) through (f) of this section.

(3) If a parent farm is composed of tracts under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (c) through (f) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) The eligibility conditions that shall be complied with for applying this method of division are:

(i) The interested owners (seller and purchaser) shall file a written memorandum of understanding of the designation with the county committee before the farm is reconstituted and prior to a subsequent transfer of ownership of the land. The heirs of an estate may use this method to designate the allotments, normal crop acreage for allocation to a tract of land sold prior to dividing the parent farm among the heirs in settling an estate: *Provided, however,* That designation by the administrator or executor shall not be accepted in lieu of designation by the heirs.

(ii) Where the land of the parent farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, mortgage, or lien must agree to the division of allotments, normal crop acreage and preceding year planted acreage.

(iii) Neither the tract transferred from the parent farm nor the remaining porton of the parent farm shall receive allotments and normal crop acreage in excess of allotments and normal crop acreage for similar forms in the same area having allotments and normal crop acreage of the commodity or commodities involved and such allotments and normal crop acreage shall be consistent with good land use.

(iv) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the provisions of this paragraph shall not be applicable to such transfer unless the county committee finds that the primary purpose of the ownership transfer was not to retain or sell an allotment and normal crop acreage. In the absence of such a finding, and if the farm contains land which has been owned for less than 3 years, that part which has been owned for less than 3 years shall be considered as a separate farm and the allotments and normal crop acreage shall be assigned to that part using the rules in paragraphs (c) through (f) of this section, as applicable. Such apportionment shall be made prior to any designation of allotments and normal crop acreage with respect to the part which has been owned for 3 years or more.

(v) The land for which ownership is being transferred to a Federal, State, or other agency was not or could not have been acquired under the right of eminent domain. If eminent domain is applicable, the provisions of § 719.11 shall apply.

(5) This method is not applicable to burley tobacco and to crop allotments or quotas which are restricted to transfer within the county by lease, sale or by owner, when the land comprising the farm is located in two or more counties.

(6) This method may be applied to land identified as Indian Tribal land when leased by the Tribal Council to two or more producers for the production of allotment and normal crop acreage crops. If the land is leased to two or more producers, the county committee shall at the request of the Tribal Council divide the allotments and normal crop acreage between the applicable tracts in the manner designated by the Council. This use of the method shall not be subject to the conditions of paragraph (b)(4) of this section.

(c) *Contribution method.* The contribution method for dividing allotments, normal crop acreage and preceding year planted acreage for 1978 is the proration of the parent farm's allotment, normal crop acreage and preceding year planted acreage to each identical tract contributed to the allotments, normal crop acreage and preceding year planted acreage at the time of combination. Unless the provisions of paragraph (a) or (b) of this section are applicable, this method shall be used to divide allotments and normal crop acreage for a farm which resulted from a combination that became effective during the 6-year period immediately prior to the current year. This method for dividing the allotments, and normal crop acreage shall be used beyond the 6-year period if records are available to show the contribution unless the county committee determines with the concurrence of a representative of the State committee that the use of the contribution method would not result in an equitable distribution of the allotments, normal crop acreage and preceding year planted acreage considering available land, cultural operation, and changes in type of farming. The contribution method shall not be used in cases involving the division for:

(1) Any commodity for which there was no allotment, normal crop acreage or preceding year planted acreage established at the time of combination.

(2) Preceding year planted acreage for 1979 and subsequent years.

(3) Normal crop acreage for 1978.

(d) *Contribution-Cropland or Contribution-History method.* In cases where the allotments, normal crop acreage and preceding year planted acreage are divided by the contribution method pursuant to paragraph (c) of this section and a further division of an identical tract is required, the allotments, normal crop acreage and preceding year planted acreage shall first be apportioned to the identical tracts and then apportioned among the parts of the identical tracts by the cropland or history method pursuant to paragraph (e) or (f) of this section, as applicable.

(e) *Cropland method.* The cropland method for dividing allotments, normal crop acreage and preceding year planted acreage is the proration of allotments, normal crop acreage and preceding year planted acreage to the tracts being separated from the parent farm in the same proration that the cropland acreage for each such tracts bears to the cropland for the parent farm. For rice, the acreage of cropland that is available for the production of rice shall be used to make the proration. The county committee shall verify or redetermine, if considered necessary, the cropland on each of the tracts of the parent farm prior to making the proration. This method shall be used if the provisions of paragraphs (a) through (c) of this section are not applicable unless the county committee determines that a division by the history method would result in allotments, normal crop acreage and preceding year planted acreage more representative of the operation normally carried out on each tract during the respective base period for the commodities. Notwithstanding any other provision of this paragraph, the allotments, normal crop acreage and preceding year planted acreage shall be apportioned on the basis of the cropland available for and adapted to the production of the allotment crop, normal crop acreage and preceding year planted acreage on each tract when the owners file with the county office a written agreement as to the amount of available and adapted cropland and the county committee approves such agreement.

(f) *History method.* The history method of division of allotments, normal crop acreage and preceding year planted acreage is the proration of allotments, normal crop acreage and preceding year planted acreage to the tracts being separated from the parent farm on the basis of the acreage determined to be representative of the operations normally carried out on each tract during the respective base period for the commodities. The base period for normal crop acreage is 1977. The base year for preceding year planted acreage is the preceding year. The history method shall be used when the county committee determines that division by the cropland method should not be used.

(g) *Variation in reconstituted allotments, normal crop acreage, and preceding year planted acreage.* Allotments, normal crop acreage and preceding year planted acreage apportioned among the divided tracts, pursuant to paragraphs (c) through (f) of this section, may be increased or decreased by as much as 10 percent of the allotment, normal crop acreage and preceding year planted acreage established for the parent farm if (1) the interested owners agree in writing, and (2) the county committee determines that the method used did not provide an equitable distribution concerning available land, cultural operations and changes in type of farming. Any increase in an allotment, normal crop acreage and preceding year planted acreage on a tract pursuant to this paragraph shall be offset by a corresponding decrease on the other tracts and all variations between tracts must be compensating.

(h) *Divided history acreage and other data.* The history acreage and other basic data, except commodity yields and minimum allotments, for divided farms shall be determined by using the same percentage figure as was used to apportion the allotment crop for the respective commodity. For commodity yields and minimum allotments applicable commodity regulations shall apply.

§ 719.9 Rules for determining farm allotments, normal crop acreage, preceding year planted acreage and history acreages where reconstitution is by combination.

If two or more farms or tracts are combined for the current year, the current year's allotments, normal crop acreage, preceding year planted acreages, history acreages on acreages considered planted for the years in the base period for the respective commodities for the reconstituted farms shall be the sum of the allotments, normal crop acreages, history acreages, preceding year planted acreages and acreages considered planted for each of the tracts comprising the combination, subject to the provisions of § 719.7(c).

§ 719.10 Preservation of cropland and allotment acreage.

(a) *Definitions.* Notwithstanding the definitions in § 719.2, for the purposes of this section, the following terms shall have the following meanings:

(1) *Final acreage.* The actual crop acreage, plus any additional acreage considered planted to the crop under applicable commodity regulations.

(2) *Underplanted acreage.* The acreage by which the allotment for a commodity or normal crop acreage exceeds the final acreage of the commodity or normal crop acreage.

(b) *Preservation of cropland and acreage available for diversion credit*—(1) *GPCP and RCP.* Cropland acreage established and maintained in vegetative cover under the Agricultural Conservation Program or Regional Conservation Program shall retain its cropland classification for the period of time the contract or agreement is in effect plus the period of time thereafter that the cover is maintained. Cropland acreage established in trees under one of the programs listed in this section shall retain its cropland classification for the period of time the contract or agreement is in effect plus an equal period thereafter provided the practice is maintained. All acreage under this subparagraph shall be available for diversion credit to the extent of the underplanted acreage of an allotment crop where needed to protect the history for such crop.

(2) *RECP-REAP-ACP and comparable practices carried out without Federal cost-sharing.* Cropland acreage established and maintained in vegetative cover (excluding trees) under the the Rural Environmental Conservation Program, the Rural Environmental Assistance Program, the Agricultural Conservation Program, or comparable practices carried out without Federal cost-sharing including approved volunteer cover shall retain its cropland classification for the period of time that the cover is maintained. To qualify for diversion credit under this paragraph (b)(2), the following conditions shall be met:

(i) Acreage must be in excess of the sum of the set-aside acreage requirements under other adjustment programs.

(ii) The practice must have been established and carried out in accordance with good farming practices.

(iii) The producer must report the conserving crop acreage each year preservation credit is desired by a date approved by the Deputy Administrator.

(c) *Termination of diversion credit.* Acreage shall cease to be available for diversion credit when:

(1) The approved vegetation is destroyed or not properly maintained.

(2) The additional period of protection in the case of trees established under a conservation program listed in paragraph (b) of this section expires or the trees are destroyed.

(d) *Diversion credit for divided farms.* When a parent farm is reconstituted by division, future diversion credit shall accrue to the farm or tract on which the vegetative cover is physically located.

(e) *Use of diversion credit.* The diversion credit determined under the provisions of this section for each underplanted allotment crop shall be considered as acreage devoted to the crop and shall be utilized in the establishment of future State, county farm allotments.

§ 719.11 Eminent domain acquisitions.

(a) *Commodities covered.* This section provides a uniform method for handling farm allotments for extra long staple cotton, peanuts, rice, tobacco, and normal crop acreage for commodities designated by the Secretary on land involved in an eminent domain acquisition. If eligible for pooling under this section, such allotments and normal crop acreage are pooled for the benefit of the owner who is displaced from his farm by eminent domain acquisition. Such pooling is for a 3-year period from the date of displacement and during such period the owner so displaced may request transfers of allotments and normal crop acreage from the pool to other farms in the United States owned by him.

(b) *Eminent domain acquisition.* An eminent domain acquisition is a taking of title to land, or the taking of an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could be, so taken under the power of eminent domain by a Federal, State, or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. An acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain. For example, a governmental agency acquires 150 acres of land from an owner as a package acquisition and requires 130 acres for the public purpose but supports the expenditure of funds for the unneeded 20 acres on the grounds that no additional cost resulted, or that avoidance of condemnation proceedings warranted the package acquisition.

(c) *Owner.* For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current titleholders cannot be considered the owner for the purpose of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.

(d) *Displacement.* The owner shall be considered displaced from a farm covered by an eminent domain acquisition on the date (1) the right to produce an allotment crop or normal crop acreage crop is relinquished voluntarily even though the owner is not required to give up possession of the land; or (2) in the case of flowage easement, the owner determines it is no longer practical to conduct farming operations on the land; or (3) the owner loses possession of the land as owner or as lessee under a lease from the agency or its designee if the lease provided unbroken possession to the owner from the date of acquisition to the end of the lease or extensions of the lease. In cases where the agency and the owner have executed a binding contract for acquisition of the farm, the owner may be considered displaced prior to completion of the acquisition if he wishes to plant the commodity on other land he owns or buys.

(e) *Notice of displacement.* The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement as soon as possible so that the allotment and normal crop acreage may be pooled in accordance with this section. Failure to so notify the county committee shall not operate to extend the 3-year period of the pool.

(f) *Pool.* Whenever the county committee determines, by notice from the owner or otherwise, that an owner has been displaced, the county committee shall establish in a pool for a 3-year period, beginning on the date of displacement, the allotments and normal crop acreage eligible for pooling under this section. Pooled allotments and normal crop acreage shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable commodity regulations.

(g) *Cases where pooling not permitted or required*—(1) *Agency has authority to continue crop production.* If the county committee determines that an agency has authority under its eminent domain powers to acquire a farm for the continued production of an allotment or normal crop acreage crop and does so acquire a farm only for such purpose and files a written notice with the county committee of the county in which the farm is located at the time of acquisition designating the allotment and normal crop acreage crops to be produced on the farm, there shall be no pooling for such crops, but farm allotments and normal crop acreage shall be established in accordance with applicable commodity regulations.

(2) *Owner waives right to have pooling.* If the owner files written notice with the county committee of intention to waive his right to have all the allotments or normal crop acreage or any part thereof, pooled and the county committee determines that the owner fully understands his right to have allotments and normal crop acreage pooled and has not been coerced to waive his right, the allotments and normal crop acreage shall be retained on the agency acquired land.

(3) *Less than 15 percent of cropland acquired.* If an agency acquires part of a farm for nonfarming purposes and the cropland on the land so acquired represents less than 15 percent of the total cropland on the farm, the allotments and normal crop acreage shall be retained on the portion of the farm not acquired by the agency and shall not be pooled.

(4) *15 percent or more of cropland acquired.* If an agency acquires part of a farm for nonfarming purposes and the cropland on the land so acquired represents 15 percent or more of the total cropland on the farm, the allotments and normal crop acreage attributable to the acquired land shall be retained on the portion of the farm not acquired by the agency if the owner files a written request with the county committee for such retention. However, only such amounts of allotments and normal crop acreage may be retained as can be supported on the available cropland and which will not exceed the allotments and normal crop acreage established on similar farms in the area, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices and other physical factors affecting production. Allotments and normal crop acreage not retained shall be pooled.

(5) *In-county transfer upon displacement.* If, prior to pooling, an owner files a request to transfer the allotments and normal crop acreage to other farms which he owns in the same county, the county committee may approve a direct transfer without formal establishment in the pool. Such transfer shall be subject to the requirements in paragraph (j) of this section.

(h) *Release of pooled allotments and normal crop acreage.* Pooled allotments and normal crop acreage may be released on an annual basis by the owner to the county committee during any year for which the allotments or normal crop acreages are pooled and not otherwise transferred from the pool. The county committee may reapportion such released allotments and normal crop acreage to other farms in the same county having allotments for such commodity or normal crop acreage. Pooled allotments and normal crop acreage shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices and soil and other physical facilities affecting the production of the commodity. Released pooled allotments and normal crop acreage shall be regarded as fully planted in the pool and not on the farm receiving reapportionment. This paragraph shall govern the release and reapportionment, of pooled allotments and normal crop acreage notwithstanding other procedures contained in applicable commodity regulations.

(i) *Sale, lease, and owner transfers.* Pooled allotments for which there is statutory authority implemented in the applicable commodity regulations for transfer of allotments on a permanent or temporary basis by sale, lease, or by owner (within the meaning of owner for such purposes) may be transferred permanently from the pool by the owner or temporarily for the life of the pooled allotment, subject to the terms and conditions in the applicable commodity regulations for such transfers.

(j) *Regular transfers from pool*—(1) *General rule.* The owner may request transfer of all or part of the pooled allotment or normal crop acreage to any farm in the United States of which he is the bona fide owner: *Provided,* That there are farms in the receiving county with allotments and normal crop acreage for the particular commodity or normal crop acreage, or if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) *Application for transfer.* The owner shall file with the receiving county commnittee written application for transfer of allotment and normal crop acreage from the pool within 3 years after the date of displacement. The application shall contain a certification by the owner that he has made no side agreement with any person for the purpose of obtaining an allotment and normal crop acreage from the pool for a person other than himself. The owner shall attach to the application all pertinent documents pertaining to his ownership or purchase of land and any leasing arrangements as for example, the deed of trust or mortgage, warranty deed, note, sales agreement, and lease.

(3) *Action by receiving county committee.* The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer: *Provided,* That the personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) *Elements of bona fide ownership.* The receiving county committee shall approve the transfer from the pool only where the documents and other evidence presented by the owner show conclusively that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish his farming operations. The elements of such an acquisition shall include, but are not limited to, the following conditions:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the owner was the operator of the acquired farm at the date of displacement, such owner shall personally operate and be the operator of the receiving farm for the first year that the allotment is transferred;

(iii) If the owner was not the operator of the acquired farm at the date of displacement and he was not a producer because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to personally operate and be the operator of the receiving farm but at least 75 percent of the allotment and normal crop acreage for the receiving farm for the first year;

(iv) If the owner was not the operator of the acquired farm at the date of displacement but he was a producer on the acquired farm at the date of displacement by virtue of receiving a share of the crops produced on the acquired farm, such owner shall not be required to be the operator of the receiving farm but he shall be a producer on the receiving farm the first year that an allotment and normal crop acreage is transferred;

(v) The contractual arrangements between the owner and the seller of the receiving farm shall not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller nor shall the seller or a person designated by or subject to the control of the seller lease the receiving farm for the first year the allotment and normal crop acreage is transferred even though such contractual arrangements are silent as to any lease; and

(vi) Contractual arrangements under which the receiving farm was purchased or leased are customary in the community where the receiving farm is located with respect to purchase price, size of payments due, time when payments are due, and size of rental payments, if any.

(5) *Action of receiving State committee.* The approval of a transfer from the pool under this paragraph by the receiving county committee shall be effective upon concurrence by the receiving State committee. Notwithstanding any other provision of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that the eligibility requirements of paragraph (j)(4), (ii), (iii), or (iv) of this section cannot be met without creating a hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which allotment and normal crop acreage is to be transferred. Notwithstanding any other provisions of this section and particularly paragraph (j)(4)(v) of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish his farming operations although the farm is leased to the seller of the farm for the first year the allotment and normal crop acreage are transferred.

(6) *Amount of allotment and normal crop acreage available for transfer.* Upon completion of all necessary approvals under this paragraph, the receiving county committee shall issue an appropriate allotment and normal crop acreage notice under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity crop rotation practices, and soil and other physical factors affecting the production of the commodity. For purposes of determining the amount of allotment and normal crop acreage available for transfer, the receiving county committee shall consider the receiving tract as a separate farm when such tract is in combination with land under separate ownership. The acreage transferred from the pool shall not exceed the allotment and normal crop acreage most recently established for the acquired farm and placed in the pool. When all or part of the allotment and normal crop acreage placed in the pool are transferred and used to establish or increase the allotment and normal crop acreage for other farms owned or purchased by the owner, all or the proportionate part of the past acreage history for the acquired farm shall be

transferred to and considered for purposes of future allotments and normal crop acreage to have been planted on the receiving farm for which an allotment and normal crop acreage is established or increased under this section. If only a part of the available allotment and normal crop acreage is transferred from the pool, the remaining part of the allotment and normal crop acreage and past acreage history shall remain in the pool for transfer to other farms of the owner until all such allotment acreage and normal crop acreage have been transferred or until the period of eligibility for establishing or increasing allotments and normal crop acreage under this section has expired.

(7) *Cancellation of transfers.* If any allotment and normal crop acreage is transferred under this paragraph and it is later determined by the receiving county or State committee or the Deputy Administrator, that the transfer was obtained by misrepresentation by or on behalf of the owner, or the conditions applicable under paragraph (j)(4) of this section are not met, the allotment and normal crop acreage for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the acreage transferred from the pool; and if the time for withdrawal from the pool has not expired, the amount of acreage initially transferred from the pool shall be returned to the pool after the period of time has expired in which the producer could exercise his rights of review and court action. Any cancellation of transfer of allotment and normal crop acreage by the receiving county committee shall be subject to approval by the receiving State committee. The receiving county committee shall issue any notice or marketing quota and penalty as may be required in accordance with applicable commmodity regulations.

(8) *Effect of release of pooled allotment and normal corp acreage.* Notwithstanding the provisions prescribed in this paragraph, if the displaced owner files a request for the transfer of a pooled allotment within the prescribed period for filing such request, but his request for transfer is filed during a year in which all or a part of the pooled allotment and normal crop acreage was released to the transferring county committee pursuant to paragraph (h) of this section, the application for transfer will be processed in the usual manner but the amount of the commodity released shall not be effective on the receiving farm until the succeeding year. When a request for transfer of pooled allotment and normal crop acreage involves a transfer from one State to another, the receiving State committee shall obtain information from the transferring State committee as to whether any part of the allotment or normal crop acreage for which the transfer is requested has been released to the transferring county committee for the current year.

(k) *Constitution of acquired land.* (1) Where the owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of his displacement from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g) (3) and (4) of this section.

(3) If part of a farm is acquired by an agency and the owner is displaced therefrom, such part shall be constituted as a separate farm on the date of displacement unless the allotments and normal crop acreage are retained on the part not acquired as provided in paragraphs (g) (3) and (4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l) *Successors in interest*—(1) *Designation of beneficiary.* The owner may file with the county committee a written designation of beneficiary of his rights in the allotments and normal crop acreage attributable to the acquired land in the event of his death and may revise such designation from time to time. The beneficiary of a deceased owner may exercise the right to continue a lease or to negotiate a lease with the agency or its designee and exercise the regular transfer rights with respect to farms owned by such beneficiary and may also exercise the release and sale, lease and owner transfer rights under this section.

(2) *Cases where no beneficiary designated.* If the owner does not file a designation of beneficiary under paragraph (l)(1) of this section and the owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with the rights as provided under paragraph (l)(1) of this section;

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship under which title passes to the survivor;

(ii) The person(s) who succeed to the deceased owner's interest under a will or by interstate succession. However, in the case of interstate succession, such person(s) shall be limited to surviving spouse, mother, father, brothers, sisters, or children of the deceased owner. In the settlement of the estate of the deceased owner, the heirs may file a written agreement with the county committee for the division of the deceased owner's rights under this section.

(m) *Limitations on transfers from pool.* (1) No transfer from the pool under paragraph (h), (i), or (j), of this section shall be approved if there remains unpaid any marketing quota penalty due with respect to the marketing of the commodity from the acquired farm has not been accounted for as required under applicable commodity regulations.

(2) If the tobacco or peanut allotment for an acquired farm next established after the date of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm or due to a false acreage report, the allotment shall be reduced in the pool in accordance with the applicable regulations.

§ 719.12 Exempting Federal prison farms and Federal wildlife refuges.

No marketing penalty shall be assessed or entered on the county or State office debt record for excess acreage of any commodity which may be produced on a Federal prison farm or Federal wildlife refuge: *Provided, however,* That this exception does not apply to penalties incurred by an individual who has a separate interest in a crop which is subject to marketing quotas and which was produced on such Federal prison farms and Federal wildlife refuges.

§ 719.13 Supervisory authority of State ASC committees.

The State committee may take any action required by these regulations which has not been taken by the county committee. State committee may also (a) correct, or require a county committee to correct any action taken by such county committee which is not in accordance with the regulations of this part, or (b) require a county committee to withhold taking any action which is not in accordance with the regulations in this part.

§ 719.14 Transfer of allotments and normal crop acreage—State public lands.

(a) *General authority.* The Secretary may permit transfers of allotments and normal crop acreage between farms in the same county where both farms are composed of public lands of the State. Such transfers shall be permitted in accordance with conditions prescribed by this section.

(b) *Application for transfer.* An application in writing requesting the transfer of one or more of the allotments and normal crop acreage on a farm entirely composed of public lands of a State shall be filed with the county committee by the agency of the State charged with the administration of the land in such farms. The application shall identify the farms as being within the same county, show that each farm is entirely composed of public lands of the State, and list the acreages requested to be transferred. Additional information as to the present operations on the farms, including all leasing arrangements, shall also be set forth in the application.

(c) *Closing date for filing applications.* The State committee shall establish the closing date for filing applications under paragraph (b) of this section for each year which shall be no later than the date when planting of the commodity involved in the transfer becomes general in the county.

(d) *Productivity adjustment in allotments, normal crop acreage and history acreage.* Each transfer of allotment and normal crop acreage under this section shall be adjusted for differences in farm productivity if the yield (projected for the year the transfer is to take effect) for the farm to which transfer is made exceeds the yield (projected for the year the transfer is to take effect) for the farm from which transfer is made by more than 10 percent. The county committee shall determine the amount of allotment and normal crop acreage to be transferred where productivity adjustment is required by dividing (1) the product of the yield for the farm from which transfer is made and the acreage to be transferred from such farm, by (2) the yield for the farm to which transfer is made. History acreage for the farm receiving allotment and normal crop acreage shall be adjusted by the same percentage as the allotment and normal crop acreage being transferred is adjusted. The amount of allotment and normal crop acreage and related farm history acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of allotment and normal crop acreage and related farm history acreage for the farm to which the transfer is made shall be the adjusted amount. The county acreage history, if applicable, shall be reduced to correspond with the adjusted history transferred to the farm. The history remaining unassigned to the county as a result of such productivity adjustment shall be tabulated by the State committee and included with the sum of county history acreage for determining the State history.

(e) *Limitation on acreages to be transferred.* The amount of allotment and normal crop acreage on a farm after a transfer under this section is made shall not exceed the average amount of allotment and normal crop acreage of at least three but not more than five farms with acreages of cropland similar to the farm receiving the transfer in the community having the applicable allotment and normal crop acreage on these farms.

(f) *Permanent vegetative cover requirements.* Each transfer or any allotment and normal crop acreage shall be subject to the condition that an acreage equal to the allotment and normal crop acreage transferred (before any productivity adjustment) shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made.

(g) *County committee action.* The county committee shall approve transfer under this section only if it determines that a timely filed application has been received, that the conditions of this section have been met, and a representative of the State committee has approved the transfer. The county committee shall issue revised notices of allotment and normal crop acreage for each farm affected by the transfer. If a county committee obtains evidence that the conditions applicable to any transfer under this section have not been met, a report of the facts shall be made to the State committee. The State committee shall determine whether such conditions have been met and if not met, shall require that the transfer be cancelled and retransferred to the original farm. Where cancellation and retransfer is required, the county committee shall issue revised notices of allotment and normal crop acreage showing the reasons for cancellation of the transfer.

PART 720—GENERAL POLICY AND INTERPRETATIONS

§ 720.1 Expiration of time limitations.

Whenever the final date prescribed in any of the regulations in this chapter for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the County or State Agricultural Stabilization and Conservation Committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day, or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is within a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

(16 U.S.C. 590, 1311, 1506, 2103, 2205; 40 U.S.C. App. 401; 7 U.S.C. 450 1, 1375, 3507, 1421, 1441, 1444, 1444d and 1445b-1)

[48 FR 35599, Aug. 5, 1983]

PART 723—CIGAR-FILLER (TYPE 41) AND MARYLAND TOBACCO

Subpart—Proclamations, Determinations, and Announcements of National Marketing Quotas and Referendum Results

PROCLAMATION OF QUOTAS

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723.65 Application for review.
723.66 Lease and transfer of tobacco acreage allotments.

Subpart—Proclamations, Determinations, and Announcements of National Marketing Quotas and Referendum Results

AUTHORITY: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375, unless otherwise noted.

SOURCE: 45 FR 8571, 8572, Feb. 8, 1980, unless otherwise noted.

PROCLAMATION OF QUOTAS

§ 723.1 Cigar-filler (Type 41) tobacco—1980-81, 1981-82, and 1982-83 marketing years.

Since the 1979-80 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed were disapproved by producers of cigar-filler (Type 41) tobacco in a referendum, and since producers of such kind of tobacco have disapproved national marketing quotas on such kind of tobacco in referenda held in three successive years subsequent to 1952, section 312(a) of the Act requires that national marketing quota be proclaimed for each of the three marketing years beginning October 1, 1980, October 1, 1981, and October 1, 1982. Accordingly, a national marketing quota is proclaimed for each such year.

§ 723.2 Maryland tobacco—1980-81, 1981-82, 1982-83 marketing years.

Since the 1979-80 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed were disapproved by producers of Maryland tobacco in a referendum, and since producers of such kinds of tobacco have disapproved national marketing quotas on such kind of tobacco in referenda held in three successive years subsequent to 1952, section 312(a) of the Act requires that a national marketing quota be proclaimed for each of the three marketing years beginning October 1, 1980, October 1, 1981, and October 1, 1982. Accordingly, a national marketing quota is proclaimed for each such crop.

DETERMINATIONS AND ANNOUNCEMENTS—1980-81 MARKETING YEAR

§ 723.11 Cigar-filler tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for cigar-filler (Type 41) tobacco is 75.6 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 26.0 million pounds and a normal year's exports of 0.3 million pounds.

(b) *Total supply.*[1] The total supply of cigar-filler (Type 41) tobacco for the marketing year beginning October 1, 1979, calculated in accordance with the Act, is 77.8 million pounds, consisting of carryover of 55.7 million pounds and estimated 1979 production of 22.1 million pounds.

(c) *Carryover.*[1] The estimated carryover of cigar-filler (Type 41) tobacco for the marketing year beginning October 1, 1980, is 52.8 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1979, of 25.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of cigar-filler (Type 41) tobacco which will make available during the marketing year beginning October 1, 1980, a supply of cigar-filler (Type 41) tobacco equal to the reserve supply level of such tobacco is 22.8 million pounds, and a national marketing quota of such amount is hereby announced. It is determined however, that a national marketing quota in the amount of 22.8 million pounds would result in undue restriction of marketings during the 1980-81 marketing year. Accordingly, such amount is hereby increased by 20 percent. The amount of the national marketing quota for cigar-filler (Type 41) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1980, is 27.4 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1980-81 marketing year by the 5-year, 1975-79, national average yield of 1,799 pounds, is 15,230.68 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1980-81 marketing year is 1.00. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the preliminary allotments for 1980 old farms.

(g) *National reserve.* The national acreage reserve is 135.00 acres, of which 25.00 acres are made available for 1980 new farms, and 110.00 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 723.12 Maryland tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for Maryland tobacco is 75.1 million pounds, calculated as provided in the Act, from a normal year's domestic consumption of 20.0 million pounds and a normal year's exports of 10.0 million pounds.

(b) *Total supply.*[1] The total supply of Maryland tobacco for the marketing year beginning October 1, 1979, calculated in accordance with the Act, is 69.0 million pounds consisting of estimated carryover of 42.6 million pounds and estimated 1979 production of 26.4 million pounds.

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[1] Rounded to the nearest tenth of a million pound.

(c) *Carryover.*[1] The estimated carryover of Maryland tobacco for the 1980-81 marketing year is 36.0 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance of 33.0 million pounds for the 1979-80 marketing year from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Maryland tobacco which will make available during the 1980-81 marketing year, a supply of Maryland tobacco equal to the reserve supply level of such tobacco is 39.1 million pounds. Accordingly, a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1980-81 marketing year by the 5-year, 1975-79 national average yield of 1,229 pounds, is 31,814.48 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1980-81 marketing year is 1.07. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1980 preliminary allotments for 1980 old farms.

(g) *National reserve.* The national acreage reserve is 200.00 acres, of which 40.00 acres are made available for 1980 new farms, and 160.00 acres are made available for making corrections and adjusting inequities in old farm allotments.

MARKETING QUOTA REFERENDUM RESULTS

§ 723.21 Referendum results for cigar-filler (Type 41) and Maryland (Type 32) tobaccos for the 1980–81, 1981, and 1982–83 marketing years.

(a) *Cigar-filler (Type 41).* Of the 752 eligible cigar-filler (Type 41) tobacco farmers who voted in the February 25-29, 1980, referendum, 57 or 7.6 percent favored national marketing quotas for the three marketing years 1980-81, 1981-82, and 1982-83, and 695, or 92.4 percent, were opposed to quotas. Since more than one-third of the farmers voting opposed quotas, the national marketing quota for cigar-filler (Type 41) tobacco of 27.4 million pounds for the marketing year beginning October 1, 1980, proclaimed on February 1, 1980, (45 FR 8570) will not be in effect. Likewise, as national marketing quotas have been disapproved in three successive years since 1952 (18 FR 8474), (19 FR 9365) (21 FR 667) quotas will not be in effect for the marketing years beginning October 1, 1981, and October 1, 1982, respectively, unless pursuant to section 312 of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture is petitioned prior to November 10, 1980, or prior to November 10, 1981, by one-fourth or more eligible farmers to proclaim national marketing quotas for the next three succeeding marketing years, respectively, and unless the quotas so proclaimed are approved by two-thirds or more of the farmers voting in a referendum.

(b) *Maryland* (Type 32). Of the 1,397 eligible Maryland tobacco farmers who voted in the February 25-29, 1980, referendum, 241 or 17.3 percent, favored national marketing quotas for the three marketing years 1980-81, 1981-82, and 1982-83, and 1,156 or 82.7 percent were opposed to quotas. Since more than one-third of the farmers voting opposed quotas, the national marketing quota for Maryland (Type 32) tobacco of 39.1 million pounds for the marketing year beginning October 1, 1980, proclaimed on February 1, 1980 (45 FR 8570), will not be in effect. Likewise, as national marketing quotas have been disapproved in three successive years since 1952 (18 FR 8474), (19 FR 9365), (21 FR 667), quotas will not be in effect for the marketing years beginning October 1, 1981, and October 1, 1982, respectively, unless pursuant to section 312 of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture is petitioned prior to November 10, 1980, or prior to November 10, 1981, by one-fourth or more eligible farmers to proclaim national marketing quotas for each of the next three succeeding marketing years, respectively, and unless the quotas so proclaimed are approved by two-thirds or more of the farmers voting in a referendum.

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[1] Rounded to the nearest tenth of a million pound.

(c) *Petition Procedure.* Any petition under paragraph (a) of section 312 of the Act shall be in writing and submitted to the Secretary, or if mailed shall be postmarked, prior to November 10, 1980, in the case of a petition for marketing quotas for the marketing years 1981-82, 1982-83, and 1983-84, or prior to November 10, 1981, in the case of a petition for marketing quotas for the marketing years 1982-83, 1983-84, and 1984-85. Any such petition shall include the address of each petitioner; shall state that such persons favor the proclamation of national marketing quotas for cigar-filler (Type 41) or for Maryland (Type 32) tobacco, as the case may be, for the years stated in the petition and the holding of a referendum; and shall show that such persons are producers engaged in the production of the crop of cigar-filler (Type 41) tobacco, or Maryland (Type 32) tobacco, as the case may be, harvested in the calendar year preceding the first of the marketing years stated in the petition, and constitute one-fourth or more of the producers so engaged.

(Secs. 301, 312, 319, 375, 52 Stat 38, as amended; 46, as amended, 85 Stat. 23, 52 Stat. 66, as amended; 7 U.S.C. 1301, 1312, 1314e, 1375)

[45 FR 40095, June 13, 1980]

Subpart—Cigar Filler (Type 41) and Maryland Tobacco Allotment Regulations, 1983-84 Marketing Year

AUTHORITY: Secs. 301, 313, 316, 317, 363, 375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 75 Stat. 469, as amended, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 66, as amended, 70 Stat. 206, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314b, 1314c, 1363, 1375, 1377, 1378.

SOURCE: 45 FR 10306, Feb. 15, 1980, unless otherwise noted.

GENERAL

§ 723.51 Basis and purpose.

The regulations contained in §§ 723.51 through 723.66 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of farm acreage allotments and normal yields for Cigar-filler (Type 41) and Maryland tobacco for the 1983-84 marketing year. The material previously appearing in these sections under Subpart—Cigar-Filler (Type 41) and Maryland Tobacco Allotment Regulations, 1980-81 marketing year remain in full force and effect for the crop to which it was applicable.

[45 FR 10306, Feb. 15, 1980, as amended at 48 FR 3359, Jan. 25, 1983]

§ 723.52 Definitions.

As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this chapter or title shall be construed as references to such parts and amendments now in effect or later issued.

(a) The provisions of Parts 718 and 719 of this chapter, including definitions, are hereby incorporated in the regulations of this part unless the context or subject matter or the provisions of the regulations of this part otherwise require.

(b) "Base period" means the five calendar years immediately proceeding the year for which farm acreage allotments are currently being established.

(c) "Current year" means the calendar year for which acreage allotments are being established, or tobacco history acreage and normal yields are being determined.

(d) "New farm" means a farm for which a tobacco allotment is established in the current year and for which there is no tobacco history acreage in the base period.

(e) "Old farm" means a farm for which there was tobacco history acreage in one of more years of the base period.

(f) "Tobacco" means each one or both, as indicated by the context, of the kinds of tobacco listed in this paragraph, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the United States Department of Agriculture.

(1) Maryland tobacco, Type 32.

(2) Cigar-filler tobacco, Type 41.

§ 723.53 Extent of determinations, computations and rule for rounding fractions.

Farm acreage allotments shall be rounded to hundredths of acres in accordance with the provisions of Part 793 of this chapter.

§ 723.54 Instructions and forms.

The Director, Tobacco and Peanuts Division, shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary, for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator, State and County Operations Agricultural Stabilization and Conservation Service.

[45 FR 10306, Feb. 15, 1980, as amended at 48 FR 3359, Jan. 25, 1983]

TOBACCO HISTORY ACREAGE, ACREAGE ALLOTMENTS, AND NORMAL YIELDS FOR OLD FARMS

§ 723.55 Determination of tobacco history acreage for old farms.

(a) The county committee shall determine from the best available data the tobacco history acreage on each old tobacco farm for each of the five years 1978-82. Data for making such determinations shall be taken from county office records, producers' records, producers' reports, estimates of other persons having knowledge of the tobacco production on the farm, and any other source available.

(b) For the year 1980, the 1980 tobacco history acreage shall be the same as the 1980 allotment if as much as 75 percent of the 1980 allotment was planted (or considered planted under conservation programs or conservation practices (Part 719 of this chapter)). If less than 75 percent of the 1980 allotment was planted or considered planted, the 1980 history acreage shall be the acreage planted or considered planted. The tobacco history acreage for 1980 shall be zero for a farm for which no 1980 tobacco acreage allotment was determined.

(c) For years for which no allotments were established for either of such kinds of tobacco, the tobacco history acreage shall consist of (1) the acreage planted to tobacco on the farm, plus (2) the acreage considered planted to tobacco on the farm. The acreage considered planted to tobacco on the farm shall consist of (i) the allotment acreage pooled under Part 719 of this chapter and (ii) tobacco acreage diverted under conservation programs or practices (if a farm was under a cropland adjustment program agreement during any year of the base period for which no tobacco acreage allotment was established, the tobacco history acreage for such year shall be the larger of:

(A) The planted acreage, or (B) the nonallotment base acreage under Part 751 of this chapter designated under agreement not to exceed any tobacco acreage as determined or computed for the farm for the year immediately preceding the year of the cropland adjustment program agreement).

(d) In determining the tobacco history acreage for each year of the base period, the county committee shall make due allowances for drought, flood, hail, and other abnormal weather conditions and plant bed and other diseases.

[45 FR 10306, Feb. 15, 1980, as amended at 48 FR 3359, Jan. 25, 1983]

§ 723.56 Determination of preliminary acreage allotments for all farms.

(a) The preliminary allotments for an old farm shall be the larger of the following:

(1) The average tobacco history acreage on the farm during the base period (1978-82); or

(2) The average tobacco history acreage on the farm in the three preceding years (1980-82).

(b) Notwithstanding the foregoing provisons of this section, no 1983 farm tobacco preliminary allotment (or 1983 farm tobacco acreage allotment) shall be determined for any land which the county committee determines has become devoted to commercial or residential development or other nonagricultural purposes, and was not and could not have been acquired under the right of eminent domain by the person or agency that did acquire it, and is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary acreage allotment (or allotment) for (1) an old farm returned to agricultural production if the allotment for the retired land was not allocated to other land in the farm of which the retired land was a part, or (2) a farm for which an acreage allotment may be determined under the provisions of § 723.59: *And provided further*, That the provisions of this paragraph shall not preclude the allocation of the allotment for the retired land to other land contained in the farm of which the retired land was a part pursuant to Part 719 of this chapter.

[45 FR 10306, Feb. 15, 1980, as amended at 48 FR 3359, Jan. 25, 1983]

§ 723.57 Old farm tobacco acreage allotment.

The preliminary allotments calculated for all old farms pursuant to § 723.56, and including those under § 723.59(a), shall be adjusted uniformly so that the total of such allotments plus the acreage available pursuant to §§ 723.58 and 723.62 shall not exceed the national acreage allotment: *Provided*, That for Cigar-filler (Type 41) tobacco if the acreage allotment determined for any farm (except farms operated, controlled, or directed by a person who also operates, controls, or directs another farm on which tobacco is produced) is less than that acreage which, with the normal yield for the farm, would produce, 2,400 pounds of tobacco, then such acreage allotment shall be increased to the smaller of (a) 120 percent thereof, or (b) that acreage which, with the normal yield for the farm, would produce 2,400 pounds of tobacco.

§ 723.58 Correction of errors and adjusting inequities in acreage allotments for old farms.

(a) Notwithstanding the limitations contained in any other section of this subpart, the farm acreage allotment for each kind of tobacco established for an old farm may be increased to correct an error or adjust an inequity if the county committee determines, with the approval of a representative of the State committee, that the increase is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotment for other old farms in the county in which the farm is located. An acreage not to exceed one percent of the national acreage allotment for each kind of tobacco minus that part of the national reserve set aside for establishing new farm allotments shall be made available for adjusting inequities and for correcting errors. The amount of the national reserve acreage available for correcting errors and for adjusting inequities will be announced at the same time the national quota is proclaimed. The reserve acreage for old farms will be allocated to each State based on the relation of the preliminary acreage allotment in that State to the national preliminary allotment.

(b) Acreage increases to adjust inequities in acreage allotments shall be made on the basis of the past farm acreage and past farm acreage allotments of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments under this paragraph shall not exceed the acreage allocated for such purpose.

(c) The allotment for a farm under a cropland conversion program agreement or land under a cropland adjustment agreement shall be given the same consideration under this section as the allotment for any other old farm.

(d) Acreage approved for a farm under this section becomes a part of the farm acreage allotment.

§ 723.59 Reallocation and release and reapportionment of allotments determined for farms acquired by an agency having the right of eminent domain.

(a) The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotment to a pool and reallocation from the pool shall be administered as provided in Part 719 of this chapter. The normal yield for each farm to which a reallocation is made as provided in this paragaph shall be determined as provided in § 723.61. For a farm for which allotment acreage was placed in a pool, the allotment remaining in the pool shall be the 1983 preliminary allotment.

(b) The displaced owner of a farm may, not later than May 1 of the current year, release in writing to the county committee for the year 1983 all or part of the acreage for the farm in a pool under Part 719 of this chapter for reapportionment for 1983 by the county committee to other farms in the county having allotments for the same kind of tobacco. The county committee may reapportion, not later than June 1 of the current year, the released acreage or any part thereof to other farms in the county on the basis of the past farm acreage and past farm acreage allotments of the same kind of tobacco, land, labor, equipment available for the production of such kind of tobacco, crop rotation practices, and soil and other physical factors affecting the production of such kind of tobacco. The allotment acreage released shall, for tobacco acreage history and future allotment purposes, be considered to have remained in the pool as though it had not been released therefrom. The acreage reapportioned to a farm under this paragraph shall be reduced, where applicable, so as not to exceed the acreage by which the 1983 final tobacco acreage on the farm, determined pursuant to Part 718 of this chapter, exceeds the 1983 allotment prior to being increased by reapportionment.

[45 FR 10306, Feb. 15, 1980, as amended at 48 FR 3359, Jan. 25, 1983]

§ 723.60 Farms divided or combined.

Allotments for farms reconstituted for 1983 shall be determined in accordance with Part 719 of this chapter.

[45 FR 10306, Feb. 15, 1980, as amended at 48 FR 3359, Jan. 25, 1983]

§ 723.61 Determination of normal yields for old farms.

The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during the period, not less than the base period, for which data are available; (b) the soil and other physical factors affecting the production of tobacco on the farm; and (c) the yields obtained on other farms in the locality which are similar with respect to such factors.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

§ 723.62 Determination of acreage allotments for new farms.

The acreage allotment, other than an allotment made under § 723.59(a), for a new farm shall be that acreage which the county committee, with approval of the State committee determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That, the acreage allotment so determined shall not exceed 50 percent of the average of the acreage allotments established for two or more but not more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further*, That, if the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under Part 718 of this chapter for the farm.

(a) *Written application.* The farm operator must file an application for a new farm allotment at the office of the county committee where the farm is administratively located on or before February 15 of the year for which the new farm allotment is requested.

(b) *Eligibility requirements for operator.* A new farm allotment may be established if each of the following conditions is met:

(1) *Owner and operator of the farm.* The operator shall be the sole owner of the farm. For the purpose of applying this paragraph (b)(1) of this section a person who owns only part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner and operator of a farm which they jointly own.

(2) *Interest in another farm.* The farm operator shall not own or operate any other farm in the United States for which a tobacco allotment or quota is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4) *Income requirement.* The operator must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products.

(i) *Computing operator's income.* The following shall be considered in computing operator's income:

(A) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment shall not be included.

(B) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(C) *Spouse's income.* The spouse's farm and nonfarm income shall be used in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(5) *Experience.* Operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained: By being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least two of the five years immediately preceding the year for which the new

farm allotment is requested. If the operator was in the armed services during the five-year period, the period shall be extended one year for each year of military service during the five years. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application.

(c) *Eligibility requirements for the farm.* A new farm allotment may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment an allotment or quota for any kind of tobacco.

(2) *Available land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also continuous production of tobacco must not result in an undue erosion hazard.

(3) *Downward adjustment.* The acreage allotment established as provided in this section for each kind of tobacco shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms.

(4) *False information.* Any new farm acreage allotment which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the allotment was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be canceled effective for the current crop year except where the provisions of § 723.64(d) apply.

§ 723.63 Determination of normal yields for new farms.

The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

MISCELLANEOUS

§ 723.64 Approval of determinations made under §§ 723.51 through 723.63 and notices of farm acreage allotment.

(a) All farm acreage allotments and yields shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination made under §§ 723.51 through 723.63. All acreage allotments and yields shall be approved by a representative of the State committee, and no official notice of acreage allotment shall be mailed to a farm operator until such allotment has been so approved, except that revised acreage allotment notices without such prior approval may be mailed in cases resulting from reconstitutions that do not involve the use of additional acreage.

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. Insofar as practical, all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing, shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment is established.

(c) If the records of the county committee indicate that the allotment established for any farm may be changed because of (1) removal of the farm from agricultural production, (2) division of the farm, or (3) combination of the farm, the mailing of the notice of such allotment may be delayed: *Provided,* That the notice of allotment for any farm shall be mailed no later than May 1 of the current year.

(d) If the county committee determines with the approval of the State executive director, that (1) the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and (2) the error was not so gross as to place the operator on notice thereof, and that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) has planted an acreage of tobacco in excess of the correct farm acreage allotment the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the current year.

§ 723.65 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county ASCS office to have such allotment reviewed by a review committee. The procedure governing the review of farm acreage allotments and marketing quotas is contained in Part 711 of this chapter.

§ 723.66 Lease and transfer of tobacco acreage allotments.

(a) *Farms eligible.* Subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. The lease and transfer of an acreage allotment shall be recognized and considered valid by the county committee subject to the conditions set forth in this section.

(b) *Maximum period.* Transfer of allotments by lease shall not exceed five years.

(c) *Filing and approval of transfer agreement*—(1) *Filing transfer agreement.* The lease and transfer of any allotment or any part thereof from the farm for which the allotment was established to another tobacco farm shall not become effective until a copy of the transfer agreement, determined by the county committee to be in compliance with the provisions of this section, is filed with the county committee not later than June 1, except that a lease shall be effective if the county committee, with the approval of a State committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond his control. The county committee may redelegate authority to approve leasing agreements to the county executive director. The filing of a properly executed Form ASCS-375, Record of Transfer of Allotment or Quota, will be considered to meet the requirements of this paragraph (c)(1).

(2) *Record of transfer on ASCS-375.* No lease and transfer of any allotment under this section shall become effective until a record of the transfer has been executed on Form ASCS-375 and filed with the county committee by the parties to the transfer. If the owner and operator of the farm from which transfer by lease is to be made are different persons, both owner and operator shall execute the record of transfer; however, only the owner or operator of the receiving farm is required to sign the transfer. A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office convenient to the

owner's or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county office mails Form ASCS-375 for the required signature.

(d) *Normal yields.* The county committee shall determine a normal yield per acre, in accordance with the provisions of § 723.61 in the case of old farms, and, in the case of new farms, § 723.63 for each farm from which, and for each farm to which, a tobacco acreage allotment or any part thereof is leased. If the normal yield determined by the county committee for the farm to which the allotment acreage is transferred does not exceed the normal yield determined by the county committee for the farm from which the allotment acreage is transferred by more than 10 percent, the lease and transfer shall be approved acre for acre. If the normal yield determined by the county committee for the farm to which the allotment acreage is transferred exceeds the normal yield for the farm from which the allotment is transferred by more than 10 percent, the county committee shall make a downward adjustment in the amount of the allotment acreage transferred by multiplying the normal yield established for the farm from which the allotment acreage is transferred by the acreage being transferred and dividing the result by the normal yield established for the farm to which the allotment acreage is transferred. In the case of transfers of allotments for two or more years, the productivity adjustment and amount of allotment so transferred shall be redetermined by the county committee each year the transfer remains in effect.

(e) *Allotment acreage considered fully planted.* The amount of allotment acreage which is leased from a farm (prior to any reduction made under this section) shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(f) *Limit on acreage transferred.* The total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm (the sum of its own allotment and acreage leased and transferred to it after any adjustment in normal yield) shall not exceed 50 percent of the acreage of cropland in the farm.

(g) *New farm allotment.* A new farm allotment shall not be leased or transferred.

(h) *Farms under long-term land-use programs.* A transfer of an allotment to or from a farm covered by a Cropland Adjustment Program agreement shall not be approved if the transferring or receiving farm has the allotment base designated under such program agreement.

(i) *Transfer from the pool.* Allotments in a pool pursuant to Part 719 of this chapter may be eligible for lease and transfer during the three-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(j) *Subleasing and limitation on lease and transfer to and from a farm*—(1) *No subleasing.* No transfer shall be made from a farm receiving allotment under a transfer agreement for the term of the transfer agreement.

(2) *Limitation on lease and transfer to and from a farm for the same crop year.* If a lease and transfer agreement is in effect for any farm, no transfer of allotment shall be made (i) from such farm receiving allotment by transfer or, (ii) to such farm which had allotment transferred from it.

(k) *Revised notices.* A form ASCS-375 showing the allotment acreage after lease and transfer shall be issued by the county committee to each of the operators of all farms from which or to which a tobacco allotment acreage is leased under this section.

(l) *Tobacco acreage allotment.* Except with respect to the erroneous allotment notice provisions in § 723.64 and the provisions for review in § 723.65, the term "tobacco acreage allotment" as used herein shall mean the allotment without regard to the application of the provisions of this section.

(m) *Zero allotment farm.* If the allotment for a farm for the current year is reduced to zero, no tobacco allotment acreage for such kind of tobacco may be leased to such farm for the current year.

(n) *Approval after review period.* No lease shall be approved by the county committee for any farm involved in a lease and transfer of allotment acreage until the time of filing an application for review, as shown on the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a lease and transfer agreement, such agreement shall not be approved by the county committee until the allotment for such farm is finally determined pursuant to Part 711 of this chapter.

(o) *Acreage allotment after lease and transfer.* The acreage allotment finally determined (after lease and transfer) for a farm under the provisions of this section shall be the allotment for such farm for the current year only for the purpose of determining (1) excess acreage, (2) the amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco, (3) eligibility for price support, and (4) the farm marketing quota and the percentage reduction for a violation in the allotment for the farm.

(p) *Cancellation, dissolution, or revision of transfer*—(1) *Cancellation.* Any transfer of allotment under this section which was approved by the county committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be cancelled by the county committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing were not notified of the cancellation before the tobacco was planted. The provisions of this paragraph (p)(1) shall not preclude application of the erroneous notice provisions under § 723.64 where such provisions are applicable.

(2) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county committees. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county committee with approval of a State committee representative determines that the producer was prevented from timely filing for reasons beyond his control.

(q) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after lease and transfer has been made. Notwithstanding the above, in the case of a division, the county committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county committee shall apportion the leased acreage.

(r) *Consent of lienholder.* No transfer of allotment other than by annual lease shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

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TERMINATION OF QUOTAS, 1979-80 MARKETING YEAR

§ 724.36 Cigar-binder (types 51 and 52) tobacco.

It has been found and determined that operation of farm marketing quotas in effect on cigar-binder (types 51 and 52) tobacco for the 1979-80 marketing year will cause the amount of such kind of tobacco which is free of marketing restrictions to be less than the normal supply of such kind of tobacco for the 1979-80 marketing year. Therefore, marketing quotas for such kind of tobacco for the 1979-80 marketing year are hereby terminated.

(Secs. 371, 375, 52 Stat. 64, as amended, 66, as amended; 7 U.S.C. 1371, 1375)

[44 FR 63081, Nov. 2, 1979]

Subpart—Tobacco Allotment and Marketing Quota Regulations, 1972-73 and Subsequent Marketing Years

AUTHORITY: Secs. 301, 313, 314, 316, 318, 363, 372-375, 377, 378, 52 Stat. 38 as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1301, 1313, 1314, 1314b, 1314d, 1363, 1372-1375, 1377, 1378, unless otherwise noted.

SOURCE: 37 FR 2746, Feb. 5, 1972, unless otherwise noted.

GENERAL

§ 724.50 Basis and purpose.

The regulations contained in §§ 724.50 through 724.110 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) and are applicable to Fire-cured, Dark air-cured, Virginia sun-cured, Cigar-binder (types 51 and 52), Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco for the 1972-73 and subsequent marketing years. They govern the establishment of farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the keeping of records and making of reports incident thereto. The applicability of the regulations for any marketing year subsequent to 1972-73 is contingent upon the proclamation of a national marketing quota for such year pursuant to section 312(a) of the Act.

§ 724.51 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this title or chapter shall include current and later amendments to the referenced parts. Unless defined in this section the words or phrases defined in § 719.2 of this chapter shall have the same meaning when used in this part.

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(a-1) *Allowable floor sweepings.* The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of the respective kind of tobacco at auction for the season for the warehouse involved.

(b) *Auction sale.* A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, including sale of all lots or baskets of tobacco at public auction in sequence at a given time.

(c) *Base period.* The 5 calendar years immediately preceding the year for which farm acreage allotments are currently being established.

(d) *Buyer's corrections account.* The warehouse account of tobacco purchased at auction by the buyer but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. This account shall include the pounds deducted resulting from returned baskets, short baskets, and short weights, and pounds added resulting from long baskets and long weights, which buyers debit or credit to the warehouseman and support with adjustment invoices.

(e) *Carryover tobacco.* Tobacco produced prior to the current calendar year which has not been marketed or otherwise disposed of prior to the beginning of the marketing year for the current crop.

(f) *Current year.* The calendar year for which acreage allotments are being established, or tobacco history acreage or normal yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

(g) *Dealer or buyer.* A person who engages to any extent in the business of acquiring or selling tobacco in the form normally marketed by producers.

(h) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Excess tobacco.* For a farm for the current year that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm times the number of acres harvested in excess of the farm acreage allotment, plus any carryover excess tobacco.

(j) *False identification.* False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on any farm when, in fact, it was produced on a different farm; or

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm; or

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(k) *Floor sweepings.* The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

(l) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse (except floor sweepings which accumulate on the warehouse floor), as adjusted by the debits and credits to the buyers corrections account, and including floor sweepings purchased from another warehouse or dealer.

(m) *Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "Marketed" shall have corresponding meanings to the term "market".

(n) *Marketing quota for a farm.* The actual production of tobacco on the farm acreage allotment, which shall be the average yield per acre for the entire acreage of tobacco harvested on the farm times the farm acreage allotment.

(o) *Marketing year.* The period beginning October 1 of the year in which the tobacco is produced and ending September 30 of the following year.

(p) *Marketing recorder.* Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service (ASCS) county office, whose duties involve the preparation and handling of records and reports pertaining to the identification or marketing of tobacco.

(q) *New farm.* A farm for which a tobacco allotment is established in the current year, and for which there is no tobacco history acreage in the base period (except an allotment established as a result of a transfer by sale or by owner for Fire-cured, Dark air-cured, or by Virginia sun-cured under § 724.70, or an allotment established as the result of acreage reallocated for Cigar-binder (types 51 and 52) and Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco under § 724.72). If, in accordance with applicable law and regulations, no tobacco acreage allotment was determined for the farm for any year of the base period, any production of tobacco on such farm during the base period shall not be considered in determining whether the farm is a new farm. The term "tobacco history acreage" as used in this paragraph is defined in § 724.57.

(r) *Nonauction sale.* Any first marketing of tobacco other than by a sale at auction.

(s) *Old farm.* A farm on which there is tobacco history acreage in 1 or more years of the base period.

(t) *Pound.* The amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by a producer, would equal 1 pound standard weight.

(u) *Resale.* The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

(v)(1) *Sale.* The first marketing of cigar-filler and cigar-binder farm tobacco on which the gross amount of the sale price therefor has been or could be readily determined.

(2) *Sale date.* The date on which the gross amount of the sale price of a first marketing of tobacco is determined.

(w) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(x) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(y) *Suspended sale.* Any first marketing of tobacco at a warehouse sale for which the sale is not identified by the end of the sale day by the marketing card (including sale memo, where applicable) issued for the farm where the tobacco was produced.

(z) *Tobacco.* Fire-cured tobacco (types 21, 22, 23, and 24); Dark air-cured tobacco (types 35 and 36); Virginia sun-cured tobacco (type 37); Cigar-binder tobacco (types 51 and 52); and Cigar-filler and Binder tobacco (types 42, 43, 44, 53, 54, and 55) as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture. As used herein "cigar tobacco" means the latter two kinds of this paragraph.

(aa) *Tobacco available for marketing.* All tobacco produced on a farm, including carryover tobacco, which has not been marketed or disposed of so that it cannot be marketed.

(bb) *Trucker.* A person who trucks or hauls tobacco for producers, or any other persons.

(cc) *Warehouseman.* A person who engages in the business of holding sales of tobacco at public auction.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 2, 38 FR 34107, Dec. 11, 1973; Amdt. 3, 39 FR 30821, Aug. 26, 1974; Amdt. 4, 48 FR 37604, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.52 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* All prescribed rounding herein shall be in accordance with the provisions of Part 793 of this chapter.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths of acres.

(c) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be determined in tenths of a percent.

(d) *Converted rate of penalty.* The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be determined in tenths of a cent.

(e) *Amount of penalty.* The amount of penalty on any lot of tobacco marketed shall be determined in dollars.

(f) *Percentage reduction for violation.* A percentage of reduction in an allotment due to a violation shall be determined in tenths of a percent.

[Amdt. 5, 42 FR 9158, Feb. 15, 1977]

§ 724.53 Supervisory authority of State ASC committee.

The State committee may take any action required by the regulations in this part which has not been taken by a county committee. The State committee may also (a) correct, or require a county committee to correct, any action taken by a county committee which is not in accordance with the regulations in this part, or (b) require a county committee to withhold taking any action which is not in accordance with the regulations in this part.

§ 724.54 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary, for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 724.55 Farms divided or combined.

The provisions of Part 719 of this chapter shall apply to allotments and history acreages for the base period for farms that are reconstituted by division or combination.

§ 724.56 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 724) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Ch. 35 and have been assigned OMB control number 0560-0117.

[Amdt. 4, 48 FR 37604, Aug. 19, 1983 and Amdt. 4, 49 FR 4367, Feb. 6, 1984]

ACREAGE ALLOTMENTS, HISTORY ACREAGE AND NORMAL YIELDS

§ 724.57 Determination of preliminary acreage allotments and tobacco history acreage for old farms.

(a) *Determination of preliminary acreage allotments*—(1) *Farms with history acreage in base period.* A preliminary farm acreage allotment shall be determined for each farm which has tobacco history acreage, as defined and explained in paragraph (b) of this section, in the base period, except that no preliminary farm acreage allotment shall be established in the current year under any one of the following conditions:

(i) A new farm allotment was established in any prior year but was cancelled for such year and the farm had no other tobacco history acreage during the base period; (ii) an allotment was pooled under Part 719 of this chapter but was cancelled; or (iii) the county committee determines that all the cropland in the farm has been retired from agricultural production and the farm was not or could not have been acquired under right of eminent domain by the acquiring person or agency. This subdivision shall not preclude the determination of a preliminary acreage allotment for an old farm returned to agricultural production if the allotment for the retired land was not allocated to other land contained in the farm of which the retired land was a part, or for a farm for which an acreage allotment may be determined under the provisions of § 724.67(a).

(2) *Preliminary farm acreage allotments.* The preliminary farm acreage allotment for the current year for a farm which qualifies for a preliminary farm acreage allotment under paragraph (a)(1) of this section shall be the same as the basic allotment for the preceding year: *Provided,* That if the tobacco history acreage for the farm in the immediately preceding year was not as much as 75 percent of the basic allotment, the preliminary acreage allotment shall be the simple average of the sum of the basic allotment and history acreage for the preceding year.

(b) *Determination of tobacco history acreage.* Tobacco history acreage shall be determined for each farm for which a tobacco farm acreage allotment has been established for the current year.

(1) *Farm acreage allotment fully preserved.* The farm acreage allotment is fully preserved as tobacco history acreage for any year if: (i) In such year or either of the two immediately preceding years the sum of (*a*) the final tobacco acreage (including failed acreage and acreage prevented from being planted because of a natural disaster) as determined under Part 718 of this chapter, (*b*) the acreage leased and transferred from the farm, and (*c*) the acreage temporarily released to the State committee under the provisions of § 724.72, is not less than 75 percent of the basic allotment after any reduction in the allotment for a

program violation, (ii) or in such year or either of the two immediately preceding years the farm acreage allotment was in the eminent domain pool.

(2) *Computed history acreage.* If the farm acreage allotment is not fully preserved as tobacco history acreage under paragraph (b)(1) of this section, the tobacco history acreage shall be the sum of the acreage (not to exceed the farm acreage allotment) as follows:

(i) Final tobacco acreage (including failed acreage and acreage prevented from being planted because of a natural disaster) as determined under Part 718 of this chapter.

(ii) [Reserved]

(iii) Acreage temporarily released to the State committee under the provisions of § 724.72.

(iv) Acreage leased and transferred from the farm.

(v) Acreage reduced for violation of the regulations of this part.

(3) *Adjustment of tobacco history acreage for abnormal weather or disease.* If the county committee determines (with the approval of a representative of the State committee) that for any year the sum of the final tobacco acreage and any acreage transferred from the farm is less than 75 percent of the allotment (after any reduction in the allotment for a program violation) because of abnormal weather or disease, the tobacco history acreage for such year shall be adjusted to become the smaller of (i) the allotment (prior to any reduction in the allotment for a program violation), or (ii) the sum of the final tobacco acreage for the farm, the additional acreage which the county committee determines (with the approval of a representative of the State committee) would have been included in the final acreage except for abnormal weather or disease, any acreage leased and transferred from the farm, and the amount of any reduction in the allotment for a program violation. Any adjustment in tobacco history acreages because of abnormal weather or disease shall not be considered as acreage devoted to tobacco in determining whether or not 75 percent of the allotment is planted. No adjustment for abnormal weather or disease shall be made unless the farm operator requests such an adjustment in writing to the county committee no later than September 1 of the crop year involved.

(4) *Zero allotment farms.* A farm for which a farm acreage allotment of zero was established shall not be credited with any tobacco history acreage.

(5) *Allotments in eminent domain pool.* The farm acreage allotment in the eminent domain pool, as provided in Part 719 of this chapter, shall be considered fully planted during the years in the pool, including any year in which the pooled allotment is released by the displaced owner to the county committee for reapportionment to other farms in the county. The tobacco history acreage shall be the same as the pooled allotment.

(6) *All history acreage is restored history acreage.* A farm shall be considered to have no tobacco history acreage during the base period and shall not be considered an old farm if the only tobacco history acreage computed for the farm during the base period consists of tobacco history acreage restored from a reduction of the farm acreage allotment for violation of the regulations in this part.

(7) *Tobacco history acreage for new farms.* The tobacco history acreage for a farm for the year it received an allotment as a new farm shall be the same as the new farm allotment if as much as 75 percent of the allotment is planted in such year. If less than 75 percent of the new farm allotment is planted, the tobacco history acreage shall be the same as the planted acreage. No adjustment for abnormal weather or disease shall be made in the tobacco history acreage for the farm for the year it was a new farm.

[Amdt. 1, 37 FR 26819, Dec. 16, 1972, as amended by Amdt. 1, 38 FR 34107, Dec. 11, 1973; Amdt. 5, 42 FR 9158, Feb. 15, 1977; Amdt. 6, 49 FR 33119, Aug. 21, 1984]

§ 724.58 Determination of old farm tobacco acreage allotments.

The preliminary allotments determined for all old farms pursuant to § 724.57 shall be adjusted uniformly so that the total of such allotments for old farms plus a reserve acreage available for adjusting inequities in acreage allotments for old farms and for correcting errors in old farm allotments shall not exceed the national acreage allotment less that part of such reserve acreage set aside for establishing new farm allotments.

§ 724.59 Determination of normal yields for old farms.

The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during any of the years of the base period for which data are available, (b) the soil and other physical factors affecting the production of tobacco on the farm, and (c) the yields obtained on other farms in the locality which are similar with respect to such factors. The normal yield first determined for a farm for any year in accordance with the foregoing provision shall serve as the normal yield for the farm for all purposes in connection with the tobacco marketing quota program for the year for which such normal yield is determined.

§ 724.60 Correction of errors and adjusting inequities in acreage allotments for old farms.

(a) *General.* Notwithstanding the limitations contained in any other section of this subpart, the farm acreage allotment for each kind of tobacco established for an old farm may be increased to correct an error or adjust an inequity if the county committee determines, with the approval of a representative of the State committee, that the increase is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotment for other old farms in the county in which the farm is located. An amount not to exceed 1 percent of the national acreage allotment for each kind of tobacco minus that part of the national reserve set aside for establishing new farm allotments shall be made available for adjusting inequities and for correcting errors. The reserve acreage for adjusting allotments under this paragraph will be prorated based on the relationship of each State's preliminary acreage allotment to the national total. The national office will advise State offices of the amount. Correction of errors shall be made out of the reserve acreage before allotments are adjusted for inequities.

(b) *Basis for adjustment.* Acreage increases to adjust inequities in acreage allotments shall be made on the basis of the past farm acreage and past farm acreage allotments of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster as determined under Part 718 of this chapter; land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments under this paragraph shall not exceed the acreage allocated for such purpose.

(c) *Farms under long-term land use programs.* The allotment for a farm under a long-term land use program agreement shall be given the same consideration under this section as the allotment for any other old farm.

(d) *Approved acreage.* Acreage approved for a farm under this section becomes a part of the farm acreage allotment.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26820, Dec. 16, 1972; Amdt. 4, 40 FR 58444, Dec. 17, 1975]

§ 724.61 Time for making reduction of acreage allotment for violation of the marketing quota regulations for a prior marketing year.

Any reductions made with respect to a farm's acreage allotment for the current year for any of the reasons provided for in § 724.95, excluding paragraph (c), shall be made no later than: (a) April 1 of the current year in the State of Virginia; or (b) May 1 of the current year in all other States. If the reduction cannot be made by such dates for the current year, the reduction shall be made with respect to the acreage allotment next established for the farm, but no later than by corresponding dates in a subsequent year: *Provided, however,* That no reduction shall be made in the acreage allotment for any farm for a violation if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

§ 724.62 Determination of acreage allotments for new farms.

The acreage allotment, other than an allotment made under § 724.67(a), for a new farm shall be that acreage which the county committee, with approval of the State committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided,* That, the acreage allotment so determined shall not exceed 50 percent (75 percent for Cigar-binder and Cigar-filler and Binder tobacco) of the average of the acreage allotments established for two or more but not more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further,* That, if the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under Part 718 of this chapter for the farm.

(a) *Written application.* The farm operator must file an application for a new farm allotment at the office of the county committee where the farm is administratively located on or before February 15 of the year for which the new farm allotment is requested.

(b) *Eligibility requirements for operator.* A new farm allotment may be established if each of the following conditions is met:

(1) *Owner and operator of the farm.* The operator shall be the sole owner of the farm. For the purpose of applying this paragraph (b)(1) a person who owns only part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner and operator of a farm which they jointly own. For Cigar-binder and Cigar-filler and Binder tobacco, the operator need not own the farm.

(2) *Interest in another farm.* The farm operator shall not own or have an ownership interest in, or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4) *Income requirement (except cigar tobacco).* The operator must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products.

(i) *Computing operator's income.* The following shall be considered in computing operator's income:

(*a*) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment shall not be included.

(*b*) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(*c*) *Spouse's income.* The spouse's farm and nonfarm income shall be used in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provision for low-income farmers (except cigar tobacco).* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(5) *Experience*—(i) *Fire-cured, Dark air-cured, and Virginia Sun-cured.* Operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained; by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least 2 of the 5 years immediately preceding the year for which the new farm allotment is requested. If the operator was in the armed services during the 5-year period, the period shall be extended 1 year for each year of military service during the 5 years. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application.

(ii) *Cigar-binder and Cigar-filler and Binder.* Operator shall have had experience in any prior year in the production of tobacco as a farm owner, farm operator, sharecropper, tenant, warehand, or laborer on a farm which produced the kind of tobacco for which an allotment is requested in the application.

(c) *Eligibility requirements for the farm.* A new farm allotment may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment an allotment or quota for any kind of tobacco.

(2) *Available land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also continuous production of tobacco must not result in an undue erosion hazard.

(3) *Entire allotment permanently transferred by sale or owner.* A farm which includes land from which the entire farm allotment for Fire-cured, Dark air-cured, or Virginia Sun-cured tobacco is transferred by sale or by owner to another farm owned or controlled by him, under § 724.70, shall not be eligible for a new farm tobacco allotment for the kind transferred during the 5 years following the year in which such transfer is made.

(4) *Entire allotment permanently released.* A farm which includes land from which the entire tobacco allotment was permanently released shall not be eligible for a new farm allotment for a period of 5 years beginning with the year the release was effective.

(5) *Entire allotment designated by owner where farm reconstituted.* A farm which includes land which has no tobacco allotment because the owner did not designate a tobacco allotment for such land when the parent farm was reconstituted pursuant to Part 719 of this chapter shall not be eligible for a new farm tobacco allotment for a period of 5 years beginning with the year in which the reconstitution became effective.

(6) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment was pooled pursuant to Part 719 of this chapter, which is subsequently returned to agricultural production, shall not be eligible for a new farm allotment for a period of 5 years

from the date the former owner was displaced.

(7) *Downward adjustment.* The acreage allotment established as provided in this section for each kind of tobacco shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms.

(8) *False information.* Any new farm acreage allotment which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the allotment was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be canceled effective for the current crop year except where the provisions of § 724.65(d) apply.

(9) *Eligibility for released acreage for Cigar-binder and Cigar-filler and Binder tobacco.* Any new farm allotment established under this section may also be considered by the county committee to receive additional acreage from the acreage released to the State committee under § 724.72.

[37 FR 26820, Dec. 16, 1972, as amended by Amdt. 3, 39 FR 30821, Aug. 26, 1974]

§ 724.63 Determination of normal yields for new farms.

The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yield for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

§ 724.64 Determination of acreage allotments and normal yields for farms shifted from production of Shade-grown cigar-leaf (type 61) wrapper tobacco to production of Cigar-binder (types 51 and 52) tobacco or Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco.

(a) Notwithstanding the foregoing provisions of this part, an allotment may be established for a farm for the current year which in the preceding year was producing Shade-grown cigar-leaf (type 61) wrapper tobacco but on which Cigar-binder (types 51 and 52) tobacco or Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco will be produced in the current year. The acreage used for such purpose will be limited to that placed in the State pool pursuant to § 724.67(c). Any allotment established pursuant to this paragraph shall, to the extent of available acreage in such pool, be determined by the county committee so as to be fair and equitable in relationship to the allotments for other old farms in the community, on the basis of the past acreage of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed and other diseases; land, labor and equipment available for the production of tobacco, crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Allotments established pursuant to this paragraph shall be eligible for consideration for adjustment under § 724.60.

(b) The normal yield for any farm for which an allotment is established under paragraph (a) of this section shall be that yield per acre which the county committee determines by appraisal, taking into consideration available yield data for the land involved and yields established as provided in § 724.59 for similar farms in the community.

§ 724.65 Approval of allotments and marketing quotas and notice of farm acreage allotments.

(a) All farm acreage allotments and yields shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination made under the regulations in this part. All acreage allotments and yields shall be approved by a representative of the State committee, and no official notice of acreage allotment shall be mailed to a farm operator until such allotment has been so approved, except that revised acreage allotment notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage or (2) of allotment reductions due to failure to return marketing cards where a satisfactory report of disposition of tobacco is not otherwise furnished as provided in § 724.95.

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. Insofar as practical, all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment is established.

(c) If the records of the county committee indicate that the allotment established for any farm may be changed because of (1) a violation of the marketing quota regulations for a prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, mailing of the notice of such allotment may be delayed: *Provided*, That the notice of allotment for any farm shall be mailed no later than (i) April 1 of the current year in the State of Virginia, or (ii) May 1 of the current year in all other States.

(d) If the county committee determines with the approval of the State executive director, that (1) the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and (2) the error was not so gross as to place the operator on notice thereof, and that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) has planted an acreage of tobacco in excess of the correct farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the current year, except that in determining whether or not 75 percent of the allotment is planted, the provisions of § 724.57 shall be followed.

§ 724.66 Application for review.

(a) *Appeal of allotment and marketing quota.* Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county ASCS office to have such allotment and marketing quota reviewed by a review committee.

(b) *Farms having excess tobacco acreage, appeal of determination of planted and excess acreage.* Any producer, after official notification of excess tobacco acreage is mailed to him may, within 15 days after the mailing of such notice, file application in writing with the county ASCS office to have such determination of excess acreage and planted acreage (including the farm allotment if not previously reviewed by a review committee) reviewed by a review committee.

(c) *Procedure.* The procedure governing reviews by review committee is contained in Part 711 of this chapter, which is available at the county ASCS office.

§ 724.67 Release and reapportionment of allotments determined for farms acquired by an agency having the right of eminent domain, or shifted from production of Cigar-binder (types 51 and 52) tobacco and Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco to production of shade-grown Cigar-leaf (type 61) wrapper tobacco.

(a) The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and the reapportionment from the pool shall be administered as provided in Part 719 of this chapter. The normal yield for each farm to which a reapportionment is made shall be determined as provided in § 724.59 for determining normal yields for old farms.

(b) The displaced owner of a farm may, not later than the final release date established by the State committee for the current year, release in writing to the county committee for the current year all or part of the acreage for the farm in a pool under Part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments for the same kind of tobacco. The county committee may reapportion, not later than 30 days after the final date established by the State committee for requesting reapportioned acreage for the current year, the released acreage or any part thereof to other farms in the county on the basis of the past farm acreage and past farm acreage allotments for the same kind of tobacco; land, labor, equipment available for the production of such kind of tobacco; crop rotation practices; and soil and other physical factors affecting the production of such kind of tobacco. The allotment acreage released shall, for tobacco history acreage and future allotment purposes, be considered to have remained in the pool as though it had not been released therefrom.

(c) The allotment determined or which would have been determined for any land which has been used for the production of Cigar-binder (types 51 and 52) tobacco or Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco, but which will be shifted in the current year to the production of Shade-grown Cigar-leaf (type 61) wrapper tobacco shall be placed in a State pool and shall be available to the State committee to establish allotments pursuant to § 724.64(a).

(d) No release and reapportionment of allotment acreage hereunder shall be the result of any private negotiations between individuals. Any acreage released shall be released to the county committee and such acreage shall be reapportioned only by the county committee.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26821, Dec. 16, 1972]

§ 724.68 Transfer of farm marketing quota.

There shall be no transfer of farm marketing quotas except as provided in §§ 724.69 through 724.72 and Part 719 of this chapter.

§ 724.69 Lease and transfer of tobacco acreage allotment—Cigar-binder (types 51 and 52) and Cigar-filler and Binder (types 42, 43, 44, and 53) tobacco.

(a) *Farms eligible.* Subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. The lease and transfer of an acreage allotment shall be recognized and considered valid by the county committee subject to the conditions set forth in this section.

(b) *Maximum period.* Transfer of allotments by lease shall not exceed 5 years.

(c) *Filing and approval of transfer agreement*—(1) *Filing transfer agreement.* The lease and transfer of any allotment or any part thereof from the farm for which the allotment was established to another tobacco farm shall not become effective until a copy of the transfer agreement, determined by the county committee to be in compliance with the provisions of this section, is filed with the county committee not later than the final filing date for the current year established by the State committee, except that a lease shall be effective if the county committee, with the approval of a State committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond his control. The county committee may redelegate authority to approve leasing agreements to the county executive director. The filing of a properly executed Form ASCS-375, Record of Transfer of Allotment or Quota, will be considered to meet the requirements of this paragraph (c)(1).

(2) *Record of transfer on ASCS-375.* No lease and transfer of any allotment under this section for 1972 and subsequent crops shall become effective until a record of the transfer has been executed on Form ASCS-375 and filed with the county committee by the parties to the transfer. If the owner and operator of the farm from which transfer by lease is to be made are different persons, both owner and operator shall execute the record of transfer; however, only the owner or operator of the receiving farm is required to sign the transfer. A State or county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any State or county office convenient to the owner's or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county office mails Form ASCS-375 for the required signature.

(d) *Normal yields.* The county committee shall determine a normal yield per acre, in accordance with the provisions of § 724.59 in the case of old farms, and in the case of new farms, § 724.63 for each farm from which, and for each farm to which, a tobacco acreage allotment or any part thereof is leased. If the normal yield determined by the county committee for the farm to which the allotment acreage is transferred does not exceed the normal yield determined by the county committee for the farm from which the allotment acreage is transferred by more than 10 percent, the lease and transfer shall be approved acre for acre. If the normal yield determined by the county committee for the farm to which the allotment acreage is transferred exceeds the normal yield for the farm from which the allotment is transferred by more than 10 percent, the county committee shall make a downward adjustment in the amount of the allotment acreage transferred by multiplying the normal yield established for the farm from which the allotment acreage is transferred by the acreage being transferred and dividing the result by the normal yield established for the farm to which the allotment acreage is transferred. In the case of transfers of allotments for 2 or more years, the productivity adjustment and amount of allotment so transferred shall be redetermined by the county committee each year the transfer remains in effect.

(e) *Allotment acreage considered fully planted.* The amount of allotment acreage which is leased from a farm (prior to any reduction made under this section) shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(f) *Limit on acreage transferred.* For the 1972 and subsequent crops of Cigar-filler and Binder (types 42, 43, 44, and 53), or Cigar-binder (types 51 and 52) tobacco, the total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm (the sum of its own allotment and acreage leased and transferred to it after any adjustment in normal yield) shall not exceed 50 percent of the acreage of cropland in the farm, except that in the case of Cigar-filler (types 42, 43, and 44) transfers, shall be limited to a total of 10 acres.

(g) *New farm allotment.* A new farm allotment shall not be leased or transferred.

(h) *Farms under long-term land-use programs.* A transfer of an allotment to or from a farm covered by a Cropland Adjustment Program agreement shall not be approved if the transferring or receiving farm has the allotment base designated under such program agreement.

(i) *Transfer from the pool.* Allotments in a pool pursuant to Part 719 of this chapter may be eligible for lease and transfer during the 3-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(j) *Subleasing and limitation on lease and transfer to and from a farm*—(1) *No subleasing.* No transfer shall be made from a farm receiving allotment under a transfer agreement for the term of the transfer agreement.

(2) *Limitation on lease and transfer to and from a farm for the same crop year.* If a lease and transfer agreement is in effect for any farm, no transfer of allotment shall be made (i) from such farm receiving allotment by transfer or, (ii) to such farm which had allotment transferred from it.

(k) *Revised notices.* An ASCS-375 showing the allotment acreage after lease and transfer shall be issued by the county committee to each of the operators of all farms from which or to which a tobacco allotment acreage is leased under this section.

(l) *Farms in violation.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county committee shall delay approval of any lease and transfer of allotment from or to the farm until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such a case cannot be made effective for the current crop year before the final date for reducing allotments for violations (see § 724.61) the lease may be approved by the county committee. In any case, if, after a lease and transfer of a tobacco acreage allotment has been approved by the county committee, it is determined that the allotment for the farm from which or to which such acreage is leased is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year.

(m) *Tobacco acreage allotment.* Except with respect to the erroneous allotment notice provisions in § 724.65 and the provisions for review in § 724.66, the term "tobacco acreage allotment" as used herein shall mean the allotment without regard to the application of the provisions of this section.

(n) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm by lease or by the owner shall not be approved if a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid: *Provided,* That this provision shall not apply if the claim is paid or the entire proceeds of the lease of the allotment are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the acres of allotment being leased.

(o) *Approval after review period.* No lease shall be approved by the county committee for any farm involved in a lease and transfer of allotment acreage until the time of filing an application for review, as shown on the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a lease and transfer agreement, such agreement shall not be approved by the county committee until the allotment for such farm is finally determined pursuant to Part 711 of this chapter.

(p) *Acreage allotment after lease and transfer.* The acreage allotment finally determined (after lease and transfer) for a farm under the provisions of this section shall be the allotment for such farm for the current year only for the purpose of determining (1) excess acreage, (2) the amount of penalty to be collected on marketings of excess tobacco including absorption of carry-over penalty tobacco, (3) eligibility for price support, and (4) the farm marketing quota and the percentage reduction for a violation in the allotment for the farm (see § 724.95). Such percentage reduction determined as applicable when the violation occurred shall be applied to the allotment being reduced prior to any lease and transfer of allotment.

(q) *Cancellation, dissolution, or revision of transfer*—(1) *Cancellation.* Any transfer of allotment under this section which was approved by the county committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be cancelled by the county committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes if:

(i) The transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the leasing agreement; and (ii) the parties to the leasing agreement were not notified of the cancellation before the tobacco was planted. The provisions of this paragraph (q)(1) shall not preclude application of the erroneous notice provisions under § 724.65 where such provisions are applicable.

(2) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county committees. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county committee with approval of a State committee representative determines that the producer was prevented from timely filing for reasons beyond his control.

(r) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after lease and transfer has been made. Notwithstanding the above, in the case of a division, the county committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county committee shall apportion the leased acreage.

(s) *Consent of lienholder.* No transfer of allotment other than by annual lease shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

(Secs. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; sec. 401, 63 Stat. 1054, as amended, sec. 106, 122, 125, 70 Stat. 191, 195, 198, as amended, sec. 16(e), 76 Stat. 606 (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836) (16 U.S.C. 590p(e))

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26821, Dec. 16, 1972; Amdt. 2, 38 FR 34108, Dec. 11, 1973; Amdt. 5, 42 FR 9158, Feb. 15, 1977; Amdt. 4, 48 FR 37604, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.70 Transfer of Fire-cured, Dark air-cured, and Virginia sun-cured tobacco allotments by lease, sale, or by owner under section 318 of the act.

Based on the present and future outlook of production and disappearance of Fire-cured, Dark air-cured, and Virginia sun-cured tobacco, it has been determined that transfer of tobacco allotments by sale, lease, or by owner will not impair the effective operating of the 1972 and subsequent year's marketing quota or price support programs for such kinds of tobacco. Transfers under section 318 of the Act shall be handled in accordance with this section.

(a) *Persons eligible to file a record of transfer (Form ASCS-375)*—(1) *Sale or lease.* The owner and operator of any old farm as defined in § 724.51 for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is or will be established for a year in which a transfer by sale or lease is to take effect shall be eligible to file a record of transfer for sale or lease of all or any part of such allotment to any other owner or operator of a farm in the same county, and in the same

State for Virginia fire-cured (type 21) and Virginia sun-cured (type 37) tobacco. The receiving farm need not be an old farm. If the owner and operator of the farm from which transfer by sale or lease is to be made are different persons, both such persons shall execute the record of transfer; however, only the owner or operator of the receiving farm is required to sign the transfer. A State or county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any State or county office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county office mails Form ASCS-375 for the required signature. In the case of a permanent transfer, a statement signed by all parties to the transaction confirming that the sale has been made shall be filed with the county committee.

(2) *By owner.* The owner of any old tobacco farm, as defined in § 724.51 for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is or will be established for the year in which the transfer is to take effect is eligible to file a record of transfer to transfer an allotment, for a term of years designated by the owner, or permanently for any or all of such kinds of tobacco from a farm to another farm in the same county (within the same State for Virginia fire-cured and Virginia sun-cured tobacco) owned or controlled by such owner.

(b) *Time for filing records of transfer.* For a transfer to be effective in the current year, a Form ASCS-375, Record of Transfer of Allotment or Quota, shall be filed with the county committee no later than the final date for filing records of transfer established by the State committee for the current year. The State committee may authorize the acceptance of a late-filed ASCS-375 in cases where the county committee determines that the late filing resulted from reason(s) beyond the producer's control.

(c) *Where to file record of transfer.* Record of transfer shall be filed with the county committee of the county where the transferring farm is administratively located.

(d) *Maximum period of transfer by lease.* Transfer of allotments by lease shall not exceed 5 years.

(e) *When transfer is effective.* A transfer shall not be effective until a record of such transfer has been executed and the county committee determines the transfer to be in compliance with the provisions of this section. Approval by the county committee shall be shown on the ASCS-375. The county committee may redelegate authority to approve transfer agreements to the county executive director.

(f) *Productivity adjustment*—(1) *Reduction in farm allotments being transferred.* The county committee shall determine a normal yield per acre, in accordance with the provisions of § 724.59 in the case of old farms and § 724.63 in the case of new farms for each farm from which, and for each farm to which, a tobacco acreage allotment or any part thereof is transferred. (For across county line transfers, the county committee for the county in which each farm is located shall determine the normal yield.) If the normal yield for the farm to which transfer is made for the year the transfer is to take effect exceeds the normal yield for the farm from which transfer is made for the year the transfer is to take effect by more than 10 percent, the allotment so transferred shall be reduced for differences in farm productivity. The county committee shall determine the amount of allotment to be transferred by sale, lease, and by owner, where productivity adjustment is required under this paragraph as follows: (i) Multiply the normal yield established for the farm from which the allotment is being transferred by the acreage being transferred, then (ii) divide the result by the normal yield established for the farm to which the allotment is transferred. The amount of allotment so transferred from a farm shall be the full amount and the amount of allotment so transferred to a farm shall be the reduced amount. In the case of temporary transfers of allotment for 1 or more years by lease or by owner, the productivity adjustment and amount of allotment so transferred shall be redetermined by the county committee each year the transfer remains in effect.

(2) *Adjustment in farm history acreage.* The farm history acreage for the immediately preceding 5 years on farms from which and to which permanent transfer of allotment is made shall be adjusted by the county committee for each of the base years to correspond with the amount of allotment transferred between the farms. In the case of temporary transfers of allotment for one or more years by lease or by owner, there shall be no reduction in farm history acreage on the farm from which the transfer is made and no farm history acreage shall be transferred to the receiving farm.

(g) *Sale and lease transfers—limit on amount of acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 10 acres of allotment: *Provided,* That the total of each acreage for each kind of tobacco allotted to any farm after such transfer (the sum of its own allotment and the acreage transferred after any adjustment in normal yields for the current year) shall not exceed 50 per centum of the acreage of cropland in the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in Part 719 of this chapter.

(h) *No transfer of new farm allotment.* A new farm allotment shall not be transferred.

(i) *Additional conditions applicable to transfer*—(1) *No permanent transfer by sale or by owner from farm to which a permanent transfer by sale or by owner was made within 3 years.* No permanent transfer by sale or by owner shall be made from any farm to which an allotment was permanently transferred by sale or by owner within the three immediately preceding crop years.

(2) *Limited years for temporary transfer to operator's farm.* A transfer requested on a temporary basis to a farm controlled but not owned by the applicant shall be approved only if the applicant will be the operator of the farm to which the transfer is to be made for each year of the period for which the transfer is requested. When the applicant for whom such transfer has been approved no longer is the operator of the receiving farm due to conditions beyond his control, the transfer shall remain in effect unless the transfer is terminated under paragraph (v) of this section. Conditions beyond the operator's control shall include, but not be limited to, death, illness, incompetency, or bankruptcy of such person.

(j) *Transfer of pooled allotment.* Allotments established for a farm as pooled allotment under Part 719 of this chapter may be transferred (1) on a permanent basis during the 3-year life of a pooled allotment or (2) on a temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period. A temporary agreement to transfer shall not serve to extend the life of such pooled allotment.

(k) *Consent of lienholder.* No transfer of allotment, other than by annual lease, shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

(l) *New farm eligibility.* Any farm from which the entire farm allotment is transferred shall not be eligible for a new farm tobacco allotment for the kind transferred during the 5 years following the year in which such transfer is made.

(m) *Farms under long-term land use programs.* (1)(i) Temporary transfer of an allotment to or from a farm covered by a long-term land use program agreement shall not be approved if the transferring or receiving farm has the allotment crop base for a kind of tobacco designated under such program agreement; (ii) permanent transfer by sale or by owner of an allotment may be approved for any farm under a CAP or CCP agreement.

(2) *Adjustments in payment rates.* Any transfer of an allotment hereunder shall be made subject to an appropriate adjustment in the rates of payment under such contract or agreement but no adjustment shall be made in such contract or agreement on the farm to which a transfer is made.

(n) *Subleasing prohibited.* No transfer shall be made from a farm receiving allotment under a transfer agreement for the term of the transfer agreement.

(o) *Limitation on transfer to and from a farm in the same year.* No transfer of allotment for any year shall be made (1) from a farm receiving allotment by transfer for such year or (2) to a farm which had allotment transferred from it for such year.

(p) *Transfer of history acreage, farm base, and marketing quota.* Permanent transfer of allotment shall have the effect of transferring history acreage, farm base, and marketing quota attributable to such allotment. In the case of a transfer by lease, the transferred allotment shall be considered for purposes of establishing future allotments to have been planted on the farm from which such allotment was transferred.

(q) *Liability of operators of farms receiving transferred acreage by lease.* The acreage allotment for a farm determined after transfer by lease shall be the allotment for such farm for the current year only for the purposes of determining (1) excess acreage, (2) the amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco, (3) eligibility for price support, and (4) the farm marketing quota and the percentage reduction for a violation in the allotment for the farm (see § 724.95). Such percentage reduction determined as applicable when the violation occurred shall be applied to the allotment being reduced prior to any transfer of allotment by lease.

(r) *Reconstituted farms.* The allotment for a farm being divided or combined in the current year shall be the allotment for the farm after transfer by lease has been made. Notwithstanding the above, in the case of a division, the county committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county committee shall apportion the leased acreage.

(s) *Farm in violation.* The maximum acreage that can be transferred from a farm is the allotment for the current year. If a violation on the transferring farm is determined after the transfer but the operator of the receiving farm was not involved in the violation, the allotment so transferred shall not be subject to a reduction: *Provided,* That, if the transfer was by lease, the allotment reduction for such farm shall be delayed until the following year.

(t) *Approval of transfers.* The county committee shall approve transfers of allotment only if it determines that an ASCS-375 was timely filed and that the transfer complies with the requirements of this section. No transfer shall be effective until approval as provided under this paragraph is obtained.

(u) *Notice of revised allotments.* The county committee shall issue revised notices (copy of ASCS-375) of farm allotment for each farm affected by the transfer of allotment.

(v) *Cancellation, dissolution, or revision of transfer*—(1) *Cancellation.* Any transfer of allotment and quota under this section which was approved by the county committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes if:

(i) The transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the leasing agreement; and, (ii) the parties to the leasing agreement were not notified of the cancellation before the tobacco was planted. The provisions of this paragraph (v)(1) shall not preclude application of the erroneous notice provisions under § 724.65 where such provisions are applicable.

(2) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county committee. Such written notification shall be filed prior to planting the tobacco. A late-filed request to dissolve or revise the transfer may be effective for the current year if the county committee with approval of a State committee representative determines that the producer was prevented from timely filing for reason(s) beyond his control.

(w) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm by lease or by the owner shall not be approved if a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid: *Provided,* That this provision shall not apply if the claim is paid or the entire proceeds of the lease of the allotment are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the acres of allotment being leased.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26822, Dec. 16, 1972; Amdt. 2, 38 FR 34108, Dec. 11, 1973; Amdt. 3, 39 FR 30821, Aug. 26, 1974; Amdt. 4, 40 FR 58444, Dec. 17, 1975; Amdt. 5, 42 FR 9158, Feb. 15, 1977; Amdt. 4, 48 FR 37604, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.71 Transfer of tobacco farm acreage allotment for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco acreage allotment for any farm in the county. The county committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage within the farm tobacco allotment for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such acreage cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee of the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county committee for the nearby county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the smaller of (1) the farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or (2) the acreage requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that:

(1) All or part of the farm allotment for the transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old tobacco farm.* Any acreage transferred under this section shall be considered for the purpose of determining future allotments to have been planted to tobacco on the farm from which such allotment is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county committee may accept applications filed after the closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

[37 FR 2246, Feb. 5, 1972, as amended by Amdt. 4, 40 FR 58445, Dec. 17, 1975; Amdt. 5, 42 FR 9158, Feb. 15, 1977]

§ 724.72 Release and reapportionment of old farm acreage allotments for Cigar-binder (types 51 and 52) and Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco.

(a) *Annual or permanent release of acreage allotments to State committee.* Except as provided in this paragraph, all or any part of a farm acreage allotment on which Cigar-binder (types 51 and 52) or Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco will not be produced and which the operator of the farm voluntarily releases on an annual basis, or both the owner and operator voluntarily releases on a permanent basis, in writing to the State committee by not later than the final date for filing releases established by the State committee for the current year shall be deducted from the allotment of such farm.

(1) For the farm voluntarily releasing tobacco farm acreage allotment on an annual basis, such acreage will be considered as having been planted on the releasing farm for the purpose of establishing allotments for subsequent years. For the farm receiving such annual released acreage such acreage shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis shall be adjusted downward to reflect the acreage permanently released.

(2) Acreage allotments shall not be released either annually or permanently, (i) from the eminent domain allotment pool if an application for transfer from the pool has been filed in accordance with Part 719 of this chapter, (ii) from new farms, or (iii) from a farm covered by a whole farm Conservation Reserve Contract, by a whole farm Cropland Conservation Program agreement entered into in 1966 and 1967, or by a Cropland Adjustment Program agreement.

(b) *Reapportionment or released acreage allotment.* The acreage voluntarily released on an annual or permanent basis for the current year may be reapportioned by the State committee to any farm in any county in the State. In addition, a farm receiving a new farm allotment may be considered for an increase as set forth in § 724.62(h). The State committee shall select the counties to which the released acreage will be reapportioned. The county committee shall select the farms to which the released acreage will be reapportioned. The State committee shall keep records on both an annual and permanent basis of the source of acreage released. Any acreage released for the current year on an annual basis which is not reapportioned by the State committee in the current year shall not be available for use in any subsequent year. Any acreage released for the current year on a permanent basis which is not reapportioned by the State committee in the current year may be reapportioned in the following year. The county committee for the county receiving released acreage may reapportion the tobacco allotment acreage on an annual or permanent basis to other farms in the county in amounts determined by the county committee to be fair and reasonable on the basis of land, labor, and equipment available for production of Cigar-binder (types 51 and 52) or Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Released acreage should not be reapportioned on a temporary or permanent basis to any farm unless there is assurance from the operator to the county committee that the released acreage being received will be produced. Allotment reapportioned to a farm on an annual basis can only be used by the receiving farm for increased production during the current year. Allotment reapportioned to a farm on a permanent basis shall be added to the current year allotment if the farm has an allotment or serve to establish an allotment for a farm that does not currently have one. A farm shall be eligible to receive reapportionment of released acreage on either or both an annual or permanent basis only if a written request is filed by the farm owner or operator at the office of the county committee not later than the final date for filing such requests established by the State committee for the current year.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26822, Dec. 16, 1972; Amdt. 5, 42 FR 9158, Feb. 15, 1977]

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

§ 724.79 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco which is determined by a representative of the State committee or county committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind until it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR Part 29), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Effective with respect to the 1982 and subsequent crops of tobacco, any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of quota tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1949.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (type 61) tobacco when it is nonquota tobacco and produced in Connecticut or Massachusetts, and to cigar-wrapper (type 62) tobacco when it is nonquota tobacco and produced in Georgia or Florida;

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards issued by the Secretary for the inspection and identification of tobacco. Such inspection and identification shall be made prior to removal of the tobacco from the State where it was produced; and

(5) Tobacco which is nonquota tobacco and produced in a quota area in which the total of the acreage allotments for quota tobacco established for farms is less than twenty acres. Notwithstanding the provisions of section 312(c) of the Act, producers of nonquota tobacco shall not be eligible to vote in the first referendum for such nonquota tobacco conducted by the Secretary after July 20, 1982.

(Secs. 301, 313, 314, 320, 372, 375, 377, 52 Stat. 38, as amended, 88 Stat. 1089, as amended, (7 U.S.C. 1301, 1313, 1314, 1314(f), 1372-1375))

[47 FR 10771, Mar. 12, 1982, as amended at 47 FR 28911, July 2, 1982; Amdt. 4, 48 FR 37604, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.80 Disposition of excess tobacco.

(a) *Where tobacco acreage exceeds the allotment.* (1) The farm operator may dispose of excess tobacco prior to the marketing from the farm of any of the same kind of tobacco by furnishing to the county committee proof satisfactory to the committee that such excess tobacco will not be marketed. Such disposition of excess tobacco, subject to the provision of paragraph (a)(2) of this section, may take place before harvesting, during harvesting, or after completion of harvesting of the kind of tobacco involved from the farm.

(2) No credit toward liquidating excess acreage shall be given for any excess tobacco disposed of after harvest, but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

(b) *Harvested acreage.* The harvested acreage from a farm shall not include harvested acreage disposed of under this section.

§ 724.81 Issuance of producer marketing cards.

(a) *General.* (1) A marketing card for use in identifying each kind of tobacco shall be issued for the current year for each farm having tobacco available for marketing. The kind of card to be issued shall be determined pursuant to this section. Cards shall be issued in the name of the farm operator except that (i) cards issued for experimental tobacco shall be issued in the name of the experiment station, (ii) cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest and (iii) where a part of a farm which includes all the tobacco acreage on the farm is cash-rented to one producer, cards shall be issued in the name of the one producer. A marketing card may be issued in the name of a producer who is not the farm operator if the county committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the current crop.

(2) If the county committee has reason to believe that one or more producers of the current crop tobacco on the farm have been or likely will be deprived of the right to use such marketing card to market his or their proportionate shares of the crop, a hearing shall be scheduled by the county committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the farm marketing quota for such crop. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county committee. If the farm operator or other producers on the farm do not attend the hearing, or are not represented, the county committee may take whatever action it deems proper on the basis of information available to it. If the county committee finds that any such producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop, a separate marketing card shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market his proportionate share of the crop.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer on the farm of the current crop.

(b) *Person authorized to issue marketing cards.* The county executive director shall be responsible for the issuance of marketing cards. Each marketing card shall bear the actual or facsimile signature of the county executive director who issued the card.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

(2) Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm

shall, to the extent of such succession, have the same rights to the use of the marketing card and assume the same liability for penalties as the original producer.

(d) *Issuance of within quota marketing card.* Except as provided in paragraph (e)(3) of this section, a within quota marketing card, MQ-76 (eligible for price support), shall be issued for each farm for each kind of tobacco:

(1) With no excess tobacco of such kind available for marketing, or the percent excess is zero.

(2) To identify tobacco grown for experimental purposes only by a publicly owned experiment station.

(e) *Issuance of excess marketing card.* An excess marketing card MQ-77 (ineligible for price support) shall be issued for each farm for each kind of tobacco as follows:

(1) *MQ-77 showing full rate of penalty.* (i) No farm acreage allotment was established, or where an allotment was established and later canceled, or

(ii) The farm operator or another producer on the farm prevents the county committee from obtaining information necessary to determine the correct acreage of tobacco on the farm, or

(iii) The farm operator fails, according to Part 718 of this chapter, to provide a certification of acreage planted to tobacco.

(2) *MQ-77 showing converted rate of penalty.* There is excess tobacco available for marketing and the percent excess exceeds zero percent but is less than 100 percent.

(3) *MQ-77 showing zero penalty.* (i) DDT TDE, toxaphene, or endrin was used on such kind of tobacco; (ii) the farm had excess tobacco and the acreage of tobacco reported by the farm operator differed from the measured acreage by more than the measurement variance specified in Part 718 of this chapter but the excess tobacco has been disposed according to § 724.80.

(f) *No Price Support.* The notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* Any producer on the farm if the producers on the farm are ineligible for price support in accordance with the provisions of Part 1464 of this title.

(2) *Producer.* A producer on a farm if the producer is ineligible for price support in accordance with the provisions of Part 1464 of this title.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 4, 40 FR 58445, Dec. 17, 1975; Amdt. 5, 42 FR 9158, Feb. 15, 1977; 42 FR 65132, Dec. 30, 1977; Amdt. 4, 48 FR 37605, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.82 Extent to which marketing from a farm are subject to penalty.

(a) *Farms having no carryover tobacco.* Marketing of tobacco from a farm having no carryover tobacco shall be subject to penalty by the percent excess determined by dividing the excess acreage of tobacco by the harvested acreage of tobacco for the farm.

(b) *Farms having carryover tobacco.* Marketing of tobacco from a farm having carryover tobacco shall be subject to penalty by the percent excess determined as follows:

(1)(i) Determine the number of "carryover" acres by dividing the number of pounds of carryover tobacco from the prior year by the normal yield for the farm for that year.

(ii) Reduce such "carryover" acres by the amount determined by subtracting the harvested acreage from the allotment in the current year.

(iii) If the "carryover" acres are entirely offset by the underharvested acreage, no penalty will be due on marketings, and the remainder of paragraph (b) of this section will be inapplicable.

(2) Determine the number of "within quota carryover acres" by multiplying the "carryover acres" (paragraph (b)(1) (i), or (ii), when determined, of this section) by the "percent within quota" (i.e., 100 percent minus the percent excess) for the year in which the carryover tobacco was produced.

(3) Determine the "total acres" of tobacco by adding the "carryover acres" (paragraph (b)(1) of this section) and the acreage of tobacco harvested in the current year.

(4) Determine the "excess acres" by subtracting from the "total acres" (paragraph (b)(3) of this section) the

sum of the current year's allotment and the "within quota carryover acres" (paragraph (b)(2) of this section).

(5) Determine the percent excess by dividing the "total acres" into the "excess acres" (paragraph (b)(4) of this section).

(c) *Converted rate of penalty.* For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty for the current crop by the percent excess obtained under paragraph (a) or (b) of this section.

§ 724.83 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that subject to prior liens, the net proceeds from any tobacco pledged as collateral for a price support loan shall be paid to the "Agricultural Stabilization and Conservation Service, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtedness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance. If requested by the producer, the county executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county executive director, two or more marketing cards may be issued for any farm. Upon the return to the county office of a marketing card which had been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 4, 40 FR 58445, Dec. 17, 1975; Amdt. 4, 48 FR 37605, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.84 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid if:

(1) It is not issued or delivered in the form and manner prescribed;

(2) An entry is omitted or is incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or,

(4) Any erasure or alteration has been made and not properly initiated by the county executive director or marketing recorder.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county executive director who issued the card, or by a marketing recorder), the farm operator, or the person having the card in his possession, shall return it to the county ASCS office at which it was issued.

§ 724.85 Misuse of marketing cards.

Any information which causes a marketing recorder, a member of a State, county, or community committee, or an employee of the State or county ASCS office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm, shall be reported immediately by such person to the county or State ASCS office.

§ 724.86 Identification of marketings, excluding cigar tobacco.

(a) *MQ-76, within quota card, and MQ-77, excess marketing card.* Subject to paragraph (b) of this section, each marketing of tobacco from a farm shall be identified by the marketing card issued for the farm either an MQ-76 or MQ-77 (including sale memo) unless prior to marketing an AMS certification shows it to be nonquota tobacco. In addition, each nonauction sale shall (1) for within quota farms be indicated by a check mark on the inside of MQ-76, and (2) for excess farms for which an MQ-77 is issued be identified by an executed bill of nonauction sale, and such bills of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(b) *Suspended sales and sales without marketing cards.* Any suspended sale, which is not identified by an MQ-76 or MQ-77 (including a sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks after the date of marketing, whichever comes first, shall be identified by MQ-82, Sale Without Marketing Card, as a marketing of excess tobacco. Form MQ-82 shall be executed only by a marketing recorder or other representative of the State executive director.

(c) *Other persons authorized to execute MQ-76 or MQ-77 (including sale memos).* (1) A warehouseman who has been authorized during the current marketing year on MQ-78, Tobacco Warehouse Organization, may record a sale on MQ-76 (or MQ-77 including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the warehouse when the marketing card is presented.

(2) Any warehouseman, or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ-78, may for each purchase of scrap tobacco execute an MQ-76, or MQ-77 (including a sale memo if the bill of nonauction sale has been executed).

(d) *Verification of sales processed during absence of marketing recorder.* Any person authorized on MQ-78 to act as a marketing recorder shall promptly present to a marketing recorder for verification each warehouse bill (floor sheet) processed and identified by an MQ-76 or MQ-77 (including any sale memos) executed by him in the absence of a marketing recorder.

(e) *Withdrawal of approval to act as marketing recorder.* The authorization on MQ-78 for persons to act as marketing recorders may be withdrawn by the State executive director if such action is determined to be necessary to properly enforce the regulations in this subpart.

(f) *Verification of penalty by warehousemen or dealers.* Each sale memo for excess tobacco issued by a marketing recorder shall be verified by a warehouseman or dealer to determine whether the amount of penalty shown to be due has been correctly computed and such warehouseman or dealer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in executing the sale memo.

(g) *Recording of serial number.* The serial number of the floor sheet shall be recorded by the warehouseman on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(h) *Separate display on auction warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco.

(3) Make and keep records that will insure a separate accounting and reporting of each of such kinds of tobacco (quota or nonquota) sold at auction over the warehouse floor.

(i) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to a warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouseman, it shall be identified as leaf account resale tobacco.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26822, Dec. 16, 1972; Amdt. 2, 38 FR 34108, Dec. 11, 1973; Amdt. 4, 40 FR 58445, Dec. 17, 1975]

§ 724.87 Identification of marketings of cigar tobacco.

(a) *Marketing card and sale memo for cigar tobacco.* If a sale of producer's cigar tobacco to a buyer is not identified with a marketing card (MQ-76 or MQ-77) issued for the farm, including a sale memo from MQ-77, by the end of the sale date and recorded and reported on MQ-79 (CF&B), Buyer's Record, by the 10th day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ-79 (CF&B) as a marketing of excess tobacco and reported not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(b) *Verification of penalty by buyer.* Each excess sale memo issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the sale memo.

§ 724.88 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the FEDERAL REGISTER.

[49 FR 29563, July 23, 1984]

§ 724.89 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer through an auction sale shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonauction sale.* The penalty due on the tobacco acquired directly from a producer, other than at auction sale, shall be paid by the purchaser of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Cigar tobacco sold without excess sale memo or within quota card identification.* The penalty due on marketing of cigar tobacco by a producer which, as to excess tobacco, is not identified by a valid sale memo, and, as to within quota tobacco, a within quota card, by the end of the sale date shall be presumed, subject to rebuttal, to be marketings of excess tobacco. The penalty thereon shall be paid by the buyer who may deduct an amount equivalent to the penalty from the amount due the producer.

(d) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 724.90 Penalties considered to be due from warehousemen, dealers, buyers and others excluding the producer.

Any marketing of tobacco from a farm in a quota tobacco producing area under any one of the following conditions shall be considered to be a marketing of excess tobacco (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(a) *Auction sale without marketing card (including sale memo for MQ-77).* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card (MQ-76 or MQ-77 (including sale memo)) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ-82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(b) *Nonauction sale.* Any nonauction sale of tobacco, except cigar tobacco, which (1) is not identified by an MQ-76 or MQ-77 (including a valid sale memo); and (2) recorded on MQ-79, Dealer's Record, not later than the end of the calendar week in which the tobacco was purchased; or (3) if purchased prior to the opening of the local auction market for the current year, is not identified by an MQ-76 or MQ-77 (including a valid sale memo) and recorded on MQ-79 not later than the end of the calendar week which includes the first day of the local auction markets, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(c) *Failure to obtain an MQ-77 and sale memo, and failure to record a sale on MQ-76—for cigar tobacco.* Any sale of cigar tobacco for which a dealer (1) if within quota, fails to record the sale on the marketing card issued for the farm, or (2) if the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the required record.

(d) *Leaf account tobacco.* If resales of a kind of tobacco are in excess of prior leaf account purchases for the same kind of tobacco, such marketing shall be considered to be a marketing of excess tobacco unless such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco.

(e) *Dealer's tobacco.* The tobacco resales of a kind of tobacco by a dealer (as shown or due to be shown on Form MQ-79), which are in excess of his total prior tobacco purchases of the same kind of tobacco (as shown or due to be shown on Form MQ-79) shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. Penalty due which is not withheld by a warehouseman shall be remitted weekly by the dealer to the State Office with his reports on Form MQ-79.

(f) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouseman or dealer, but which is not so reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouseman or dealer furnishes a report of such resale, which is acceptable to the State executive director. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(g) *Unrecorded sale of cigar tobacco.* Any sale of cigar tobacco which is not recorded on MQ-79 (CF&B), Buyer's Record Book, by the tenth day of the month next following the month during which the sale date occurred shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(h) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer thereof is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by such person.

(i) *Excess resale rule.* Where an analysis of an auction warehouse or dealer account shows excess resales for the season to be less than 100 pounds, the State executive director may accept the account as being satisfactory and no penalty due on account of excess resales.

(j) *Carryover tobacco (except cigar tobacco).* Any tobacco on hand and reported or due to be reported under § 724.96 for warehousemen and § 724.97 for dealers, shall be included as a resale in determining whether an account had excess resales. Unless the kind of tobacco is determined to the satisfaction of the State committee or the committee's representative it shall be considered the kind with the highest marketing quota penalty rate unless the warehouseman or dealer furnishes proof that the Agricultural Marketing Service, U.S. Department of Agriculture, has classified the tobacco as a kind with a lower penalty rate or a kind not subject to quotas. Unless the warehouseman furnishes proof acceptable to the State committee and unless the dealer furnishes proof acceptable to the State executive director, showing that such account does not represent excess tobacco, penalty at the full rate shall be paid thereon by such warehousemen or dealer.

(k) *Floor sweepings.* Effective for the 1982 and subsequent crops of tobacco, any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price, as specified in § 724.88, for the immediately preceding marketing year. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days after the warehouse closes for the auction season shall be considered as marketed. The floor sweepings on hand shall be weighed by the warehouseman and the weight shall be certified by the warehouseman, such weighing to be done in the presence of a representative of either the county committee or the State committee. Floor sweepings which are destroyed in the presence of a representative of the county committee within 30 days after the warehouse closes for the season shall not be considered as marketed when determining the quantity of floor sweepings marketed. If, after the warehouse has been closed for the auction season for more than 30 days, the county committee determines that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of Part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Agricultural Stabilization and Conservation Service, USDA" within 15 days after the date of mailing of the notice.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26823, Dec. 16, 1972; Amdt. 4, 40 FR 58445, Dec. 17, 1975; Amdt. 4, 48 FR 37605, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.91 Producer penalties; false identification; failure to account; canceled allotments.

(a) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number acres harvested in the current year in excess of the farm acreage allotment shall be deemed to have been marketed as excess tobacco from such farm.

(2) If any producer who manufacturers tobacco products from tobacco produced by or for him fails to make the reports or makes a false report required under § 724.95(g), he shall be deemed to have failed to account for the disposition of tobacco produced on the farm(s) involved. The filing of a report by a producer under § 724.95(g), which the State committee finds to be

incomplete or incorrect, shall constitute a failure to account for the disposition of tobacco produced on the farm.

(b) *Canceled allotment.* If part or all of the tobacco produced on a farm has been marketed, and the allotment for the farm is canceled, any penalty due on the marketings shall be paid by the producer.

(c) *Person to pay penalty when erroneous rate is shown on card.* If an erroneous penalty rate is shown on a marketing card and tobacco is identified by such card, the producer shall remit any additional penalty due for the sale.

(d) *Ineligible for price support.* Effective for the 1983 and subsequent crops, a penalty at the basic rate as specified in § 724.88 for the current marketing year shall be assessed with respect to any marketings of such kind of tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agreed to make a contribution to the No Net Cost Account or Fund for such marketing year as required by Part 1464 of this title.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 4, 48 FR 37605, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.92 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that (1) in the case of tobacco removed from storage under bond, penalty shall be due on the date of such removal from storage, or (2) in the case of false identification or failure to account for disposition of tobacco, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount thereof to the State ASCS office not later than the end of the calendar week in which the tobacco becomes subject to penalty, except that for cigar tobacco, the penalty shall be paid not later than the 10th of the calendar month next following the month in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service, may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale—net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sale—converted penalty rate.* Nonauction sales shall be subject to the converted rate of penalty for the farm on which the tobacco was produced and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

(d) *Request for return of payment.* Any producer of tobacco and any other person who paid any penalty after the marketing of all tobacco available for marketing from the farm may request the return of the amount of any such payment which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the county office within 2 years after the payment of the penalty. Approval of the return of any such payment to a producer shall be by the county committee, subject to the approval of the State executive director.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 4, 48 FR 37605, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.93 [Reserved]

§ 724.94 Lien for penalty.

(a) *Lien on tobacco.* Until the amount of any penalty which is imposed in accordance with the provisions of section 314 of the Act (7 U.S.C. 1314) is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

(1) The tobacco with respect to which such penalty is incurred.

(2) Any other tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien on subsequent tobacco attaches at the time the debt is entered on a debt record in:

(1) *Indebted producers.* The county ASCS office for the county in which a subsequent crop of tobacco is grown.

(2) *Indebted warehouseman.* The State ASCS office for the State in which the warehouse is located.

(3) *Indebted dealer.* The State ASCS office for the State to which the dealer is required to file reports.

(c) *List of tobacco marketing penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the claim record for the respective office. The list shall be available for examination upon written request by any interested person.

[Amdt. 4, 48 FR 37605, Aug. 19, 1983 and Amdt. 4, 49 FR 4367, Feb. 6, 1984]

RECORDS AND REPORTS

§ 724.95 Producer's records and reports.

(a) *Report of tobacco acreage.* (1) If any producer on a farm files or aids or acquiesces in the filing of any false report with respect to the acreage of tobacco grown on the farm, the tobacco allotment next established for any such farm and kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the filing of, aiding, or acquiescing in the filing of, such report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false provided that the filing of the report will be construed as intentional unless the report is corrected and any additional penalty is paid, or (ii) no person connected with the farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false acreage report.

(2) If a farm operator files a certification of tobacco acreage on the farm and, after a farm visit and measurement of the acreage, it is determined by the county committee (with approval of the State committee) that the certification was false (either significantly under certification or significantly over certification by more than the tolerance for certification as provided in Part 718 of this chapter) in what amounts to a scheme or device to defeat the purpose of the program, the allotment next established for the farm shall be reduced.

(3) If the conditions in paragraphs (a)(1) (i) and (ii) of this section are not applicable, the next established allotment shall be reduced on the basis of pounds computed as follows: The acreage falsely certified (difference between certified and measured acreage) shall, for the year of the violation, be multiplied by the farm's actual yield. Such method of determining the amount of allotment reduction also is provided for in paragraph (a)(1)(i) of this section.

(b) *Report of tobacco grown for experimental purposes.* For farms on which tobacco is being grown for experimental purposes only, the Director of a publicly owned agricultural experiment station shall furnish the State ASCS office, prior to the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, a report showing the following information with respect to each kind of tobacco and farm on which tobacco is grown for experimental purposes only:

(1) Name and address of the publicly owned experiment station;

(2) Name of the owner, and name of the operator if different from the owner, of each farm on which tobacco is grown for experimental purposes only;

(3) The amount of acreage of tobacco grown on each farm for experimental purposes only; and

(4) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only, the tobacco was grown under his direction, and the acreage

on each plot was considered necessary for carrying out the experiment.

(c) *Harvesting second crop tobacco from same acreage.* If, in the same calendar year more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested from the same acreage of a farm and is marketed, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(d) *Cancellation of new farm allotment.* Any new farm allotment approved under this subpart which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the allotment was established. Where incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be canceled effective for the current crop year except where the provisions of § 724.65(d) apply.

(e) *False identification.* Where false identification (see § 724.51(j)) occurs as to any tobacco, the allotment next established for the farm or farms and kind of tobacco involved shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing: *Provided,* That, the marketing shall be construed as intentional, unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in such marketing. The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are minimal when compared to the farm marketing quota and no adverse effect on the operation of the tobacco program in the area would result.

(f) *Report on marketing card.* The operator of each farm on which tobacco is produced shall return to the county ASCS office each marketing card issued for the farm whenever marketings from the farm are completed and, in no event, later than (1) June 1 of next calendar year after issuance of the card in the case of cigar tobacco, and (2) for all other kinds of tobacco, not later than 20 days, in the year of issuance of the card, after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county committee. Upon failure to satisfactorily account to the county committee for disposition of tobacco marketed from the farm the allotment next established for such farm and such kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county committee and a representative of the State committee that the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided,* That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such proof. As to each MQ-77 issued for any kind of tobacco, at the time the marketing card is returned to the county ASCS office, there shall be shown on each card the quantity of tobacco on hand, if any, including the crop year it was produced and its location. The card shall be signed by the farm operator. As to each MQ-76 for cigar tobacco, at the time the marketing card is returned to the county ASCS office, the Record of Sales form on the card shall be signed by the farm operator.

(g) *Reports by producer-manufacturers.* (1) Each producer who manufactures tobacco products from tobacco produced by or for him as a producer shall report, as to each farm on which such tobacco is produced, to the State ASCS office as follows with respect to such tobacco.

(i) If the harvested acreage is within the allotment, the producer-manufacturer shall furnish the State ASCS office a report, as soon as all the tobacco from the farm has been weighed, showing the total pounds of tobacco produced, the date(s) on which such tobacco was weighed, the farm serial number of the farm on which it was produced, and the estimated value of such tobacco.

(ii) If the harvested acreage is in excess of the allotment, the producer-manufacturer shall furnish the State ASCS office a report as soon as all the tobacco from the farm has been weighed, showing the total pounds of tobacco produced on the farm, the date(s) on which the tobacco was weighed, the farm serial number of the farm on which it was produced, the estimated value of the tobacco, and the location of the tobacco. If the required reports are not made, penalty shall be paid on the tobacco by the producer-manufacturer, at the converted rate of penalty shown on the marketing card issued for the farm, when it is moved from the place where it can be conveniently inspected by the county committee at any time separate and apart from any other tobacco.

(2) If the producer-manufacturer has excess tobacco and does not pay the penalty thereon at the converted rate of penalty shown on the marketing card, he shall notify in writing the buyer of the manufactured product or the buyer of any residue resulting from processing the tobacco, at time of sale of such product or residue, of the precise amount of penalty due on such manufactured product or residue. In such event, the producer-manufacturer shall immediately notify the State executive director and shall account for the disposition of such tobacco by furnishing the State executive director a report on a form to be furnished by him, showing the name and address of the buyer of the manufactured products or residue, a detailed account of the disposition of such tobacco and the exact amounts of penalty due with respect to each such sale of such products or residue, together with copies of the written notice of the exact amounts of the penalty due given to the buyer of such products or residue. Failure to file such report, or the filing of a report which is found by the State committee to be incomplete or incorrect, shall be considered failure of the producer-manufacturer to account for the disposition of tobacco produced on the farm and the allotment next established for the farm shall be reduced for such failure, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees, that (i) the failure to furnish such report of disposition was unintentional and the producer-manufacturer on such farm could not reasonably have been expected to furnish such report of disposition: *Provided,* That such failure will be construed as intentional unless such report of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such report. The producer-manufacturer shall be liable for the payment of penalty.

(h) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator on each farm, or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request by certified mail from the State or county committee, within 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ-108, Report of Production and Disposition, a written report of the acreage production and disposition of all tobacco produced on the farm by sending the same to the

State or county committee showing, as to the farm at the time of filing such report, (1) the total harvested acres, (2) the total pounds of tobacco produced, (3) the amount of tobacco on hand and its location, (4) as to each lot of tobacco marketed the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed, the gross price and the date of the marketing, and (5) complete details as to any tobacco disposed of other than by sale. Failure to file the **MQ-108**, as requested, the filing of a false **MQ-108**, or the filing of an **MQ-108** which is found by the State or county committee to be incomplete or incorrect, shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm and kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that (i) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided*, That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such proof.

(i) *Amount of allotment reduction.* The amount of reduction in the allotment for the current year for a violation described in paragraph (a), (e), (f), (g), or (h) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred. Where the violation equals or exceeds the amount of the farm marketing quota, the amount of reduction shall be 100 percent. The quantity of tobacco determined by the county committee to have been falsely identified, or produced on acreage falsely omitted from an acreage report as filed, or for which the county committee determines that proof of disposition has not been furnished, shall be considered as the amount of tobacco involved in the violation. If the actual quantity of tobacco falsely identified, or produced on acreage falsely omitted from an acreage report, or for which proof of disposition has not been furnished is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If (1) the actual quantity of tobacco produced on acreage falsely omitted from an acreage report, or for which proof of disposition has not been furnished is not known, or (2) if the actual total production of tobacco on the farm is not known, the county committee shall determine such actual quantity or such total production and the farm marketing quota in the following manner. The yield per acre and the total production of tobacco on the farm shall be determined by taking into consideration the condition of the tobacco crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar:

Provided, That the determination of the total production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting production of tobacco are similar. The yield per acre and the total production of tobacco for the farm as so determined by the county committee shall be deemed to be the actual yield per acre and the actual total production of tobacco for the farm. The actual yield per acre of tobacco on the farm as so determined by the county committee multiplied by the farm acreage allotment shall be deemed to be the actual production of the acreage allotment and the farm marketing quota. Where the actual quantity of tobacco for which proof of disposition has not been furnished is not known, such quantity shall be determined by the county committee to be the quantity of tobacco remaining after deducting from the total production of tobacco on the farm determined as aforesaid, the quantity of tobacco for which proof of disposition has been furnished. Where the actual quantity of tobacco produced on acreage falsely omitted from an acreage report is not known, such quantity shall be determined by the county committee to be the quantity resulting from multiplying the yield per acre for the farm determined as aforesaid by the acreage falsely omitted from the acreage report as filed. Where it is determined by the county committee, under paragraph (a) of this section, that a producer on a farm intentionally caused an incorrect tobacco acreage determination the amount of reduction in the allotment for the current year shall be that acreage determined by subtracting the allotment for the year of violation from the finally determined acreage for such year and using the production thereon as the amount of tobacco involved in the violation.

(j) *Allotment reduction for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required.

(k) *Allotment reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced.

(l) *County administrative hearings in connection with violations.* Except for the failure to return a marketing card to the county office, the allotment for any farm shall not be reduced for a violation under this section until after the operator of the farm has been notified in writing by the county executive director of the time and place of a hearing to determine the nature and extent of the violation. The notice of the hearing shall request the farm operator to bring to the hearing warehouse bills (floor sheets) and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in this notice and any action taken on the violation shall be taken after the hearing. If the farm operator does not attend the hearing, or is not represented, the county committee may take whatever action it deems proper.

[37 FR 2746, Feb. 5, 1972; 37 FR 3507, Feb. 17, 1972, as amended at 37 FR 26823, Dec. 16, 1972; Amdt. 2, 38 FR 34108, Dec. 11, 1973; Amdt. 3, 39 FR 30822, Aug. 26, 1974]

§ 724.96 Warehouseman's records and reports.

Each warehouse shall keep the records and make the reports separately for each quota or nonquota kind of tobacco as provided in this section.

(a) *Record of marketing*—(1) *Auction sale.* Each warehouseman shall keep such records as will enable him to furnish the State ASCS office with respect to each auction sale and for each kind of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller, in the case of a sale by a producer, and in the case of a resale, the name of the seller.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and, in addition, with respect to each individual basket or lot of tobacco constituting the auction sale, the following information:

(*a*) Name of purchaser.

(*b*) Number of pounds sold.

(2) *Record for separate accounts.* Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonauction sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco.

(iii) Resales of floor sweepings.

(3) *Buyers corrections account.* Each warehouseman shall keep such records including negative adjustment invoices as will enable him to furnish the State ASCS office on Form MQ-71, the total pounds of the debits (for returned baskets, short baskets and short weights

of tobacco) and credits (for long baskets and long weights of tobacco) to the Buyers Corrections Account. Where the warehouseman returns to the seller tobacco debited to the Buyers Corrections Account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the Buyers Corrections Account and a corresponding purchase (debit entry) in the case of a dealer on his MQ-79, Dealer's Record. Any balancing figure reflected on the warehouseman's summary of billouts shall not be included in the Buyers Corrections Account.

(4) *Scrap tobacco acquired from grading producer's tobacco.* Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(5) *Scrap tobacco acquired from furnishing producers curing and stripping space.* Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(6) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show resale and: (i) For dealers, the name of the dealer making each resale; and (ii) for the warehouse, the name of the warehouse and either "floor sweepings" or "leaf account" tobacco.

(7) *Filing sale bills.* At the end of each sale day, the tobacco sale bills shall be sorted and filed by numerical order by sale dates, and basket tickets shall be filed in an orderly manner by sale dates or by numerical order.

(8) *Nonquota tobacco or quota tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or there is question as to what kind of quota tobacco is being offered, an inspection shall be obtained from the Agricultural Marketing Service (AMS) of this Department after the tobacco is weighed and in line for sale. If an AMS inspection shows that a basket or lot of tobacco is of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared.

(b) *Identification of producer sales of tobacco.* The warehouseman shall not weigh in any producer tobacco for sale unless a marketing card (MQ-76 or MQ-77) is furnished the weighman or the tobacco is represented to be a nonquota kind which is required to be displayed in a separate area on the warehouse floor under § 724.86(h).

(1) *Floor sheet.* The serial number of the Form MQ-76 or MQ-77 on which tobacco is to be marketed at auction shall be recorded by the warehouseman on his office copy of the warehouse bill (floor sheet) prior to the time the tobacco is offered for sale. The letters "NA" shall be shown on each line of warehouse bill (floor sheet) on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and there shall be recorded on all such warehouse bills (floor sheets) the serial number of the Form MQ-76 or Form MQ-77 on which the tobacco is marketed at the time the tobacco is purchased at nonauction sale. A copy of the warehouse bill (floor sheet) bearing the letters "NA" shall be furnished the producer for any lot or basket of such tobacco purchased by the warehouseman.

(2) *Check register.* The serial number of the warehouse bill (floor sheet) shall be recorded by the warehouseman on the check register or check stub for the check written covering an auction sale of tobacco by a producer.

(3) *Marketing card entries.* The serial number of the warehouse bill (floor sheet) shall be recorded on the inside of the marketing card by the marketing recorder or warehouseman for each sale of tobacco by a producer.

(4) *Basket ticket.* At the time tobacco is weighed for marketing, the warehouseman shall record the weight of each basket of tobacco on the tobacco

sale bill and on the basket ticket. If the marketing card which is presented to identify the tobacco at weigh-in bears the notation "No Price Support", the same notation shall be entered by the warehouseman on the basket ticket for each basket of tobacco which is identified with the same marketing card.

(c) *Sale memo and bill of nonauction sale.* A record of sales (1) on MQ-76 and (2) on MQ-77 or MQ-82, Sale Without Marketing Card (including sale memo from MQ-77 or MQ-82), shall be obtained by a warehouseman to cover each marketing of tobacco from a farm through a warehouse and each nonauction sale of tobacco purchased by or for the warehouseman including scrap tobacco obtained as result of providing curing space or stripping space for farmers. Each MQ-76 and MQ-77 (including sale memo) shall be executed as follows:

(i) *Auction sale.* An auction sale identified by MQ-76 shall show in the spaces provided therefor, the bill (floor sheet) number, checkmark to show the sale was by auction, a checkmark to show nonauction for purchases identified "NA" on the warehouse bill (floor sheet), pounds sold, name and address of warehouse, and date of sale. In addition, each sale memo issued from MQ-77 to cover an auction sale shall show on the first page thereof in all of the spaces provided therefor, the warehouse bill number, pounds sold, amount of penalty due, name and address of warehouse, and date of sale.

(ii) *Nonauction sale to a warehouseman who does not prepare a warehouse bill (floor sheet).* An MQ-76 used to cover a nonauction sale of tobacco to a warehouseman who does not prepare a warehouse bill to cover the sale shall show, a checkmark to indicate sale was by nonauction, pounds sold, name and address of the warehouse, and date of sale. When an MQ-77 is required to be used under this paragraph (c)(2)(ii) a sale memo shall be executed, including the signature of the producer on the reverse side.

(iii) *Nonauction sale to a warehouseman who prepares a warehouse bill (floor sheet).* (*a*) Where a warehouseman purchases all the delivery of a producer's tobacco at a nonauction sale and prepares a warehouse bill to cover the purchase, on MQ-76 there shall be shown the bill number, checkmark to show nonauction purchases, pounds sold, name and address of warehouse, and date of sale. When an MQ-77 is required to be used under this subparagraph, a sale memo shall be executed, including the signature of the producer on the reverse side.

(*b*) Where a warehouseman purchases at nonauction sale part of a delivery of tobacco by a producer and the remainder of the tobacco is sold at auction and such tobacco is identified by an MQ-76 the Record of Sales shall be completed to show the warehouse bill number, checkmark under both auction and nonauction, and the total number of pounds covered by the entire delivery under "Lbs. Sold", the name and address of the warehouse and date of sale. If the sale is identified by an MQ-77, the sale memo (front) shall be completed to show the warehouse bill number, the total number of pounds covered by the entire delivery under "Lbs. Sold", the amount of penalty due, name and address of the warehouse, and date of sale. In addition the reverse side of the sale memo shall show the number of pounds sold at nonauction.

(d) *Suspended sale record.* Any warehouse bills covering first marketing of farm tobacco which have not been identified by valid MQ-76 or MQ-77 at the end of the sale day shall be presented to a market recorder who shall stamp such bills "Suspended" and write thereon the serial number of the suspended sale, and record the bills on MQ-80 Daily Auction Warehouse Report: *Provided,* That if a marketing recorder is not available, the auction warehouse may stamp such bills "Suspended" and deliver them to a marketing recorder when one is available.

(e) *Warehouseman's entries on dealer's record.* Each warehouseman shall record, or have the dealer record, on MQ-79 the total purchases and resales made by each such dealer or other warehouseman during each sale day at a warehouse. If any tobacco resold by the dealer is tobacco bought by him from a crop produced prior to the current crop, entry on MQ-79 shall clearly show such fact.

(f) *Record and report of purchases and resales.* Each warehouseman shall keep a record and make reports on MQ-79, Dealer's Record, showing:

(1) All nonauction purchases of tobacco except nonauction purchases for which a warehouseman prepares a floor sheet.

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

(4) Resales of floor sweepings separately from leaf account tobacco. MQ-79 shall be prepared and a copy forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold: *Provided,* That if tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ-79 and on the sale memos to be due, shall be forwarded to the State ASCS office with the original copy of MQ-79.

(g) *Daily report of auction warehouse business.* Each warehouseman shall prepare and promptly forward at the end of each sale day to the State ASCS office a report on MQ-80, Daily Auction Warehouse Report, showing for each sale day, unless otherwise stated below:

(1) For each dealer or buyer as originally billed, the total pounds of tobacco purchased at auction and resales at auction on the warehouse floor.

(2) For any association as originally billed, the total pounds and gross amount of loan tobacco acquired at auction, and resales at auction, if any, on the warehouse floor.

(3)(i) The total pounds of leaf account purchases at auction on the warehouseman's own floor, (ii) the total pounds of leaf account purchases at nonauction sale for which a floor sheet is prepared, and (iii) the total pounds of all leaf account resales at auction on the warehouseman's own floor, including resales of tobacco from the warehouseman's buyers corrections account.

(4) The total pounds of all resales at auction on the warehouseman's own floor of floor sweepings which accumulated on the warehouseman's own floor.

(5) The sum of the totals for paragraphs (g) (1), (2), (3), and (4) of this section.

(6) The computed total of first sales at auction on the warehouse floor.

(7)(i) The warehouse gross sale pounds for the day, as billed to buyers (sum of paragraphs (g)(1), (2), and (3) of this section, (ii) the pounds on warehouse check register if shown thereon, and (iii) the total pounds of the resales (sum of paragraphs (g) (1), (2), (3), and (4) of this section).

(8) On the report for the last sale day for the season, the pounds of all tobacco on hand whether such tobacco represents leaf account tobacco or floor sweepings which accumulated on the warehouseman's own floor.

(9) For each warehouse sale of excess tobacco from a farm, the applicable sale memo and numbers thereof with remittance of the penalty due as shown thereon.

(10) As to the information required to be entered on MQ-80, Daily Auction Warehouse Report, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) For each sale identified by an MQ-76 or MQ-77 (including sale memo) or MQ-82, Sale Without Marketing Card, the pounds sold; (ii) for each sale suspended, the warehouse bill(s) number and pounds sold; and (iii) for each sale cleared from suspension, the MQ-76 number or for MQ-77 or MQ-82 the sale memo number, and the date of clearance.

(11) Where a producer rejects the sale of a basket of tobacco, and the tobacco has been billed out and the bills presented to the buyer, the warehouseman shall not change the (i) marketing card, or (ii) the MQ-80 reporting the sale. If the warehouseman gains possession of the tobacco and it

is resold by such warehouseman, it shall be identified as resale tobacco.

(12) In balancing first sales (represented by marketing recorder's total) with computed first sales (bill-out total minus resales as reported by the warehouseman) the State executive director is authorized to approve reports with variance not to exceed one-half of 1 percent of such pounds.

(13) At the end of the season, each warehouseman shall: (i) Report on his final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, (ii) permits its inspection by a representative of ASCS, and (iii) provide for the weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained as provided in paragraph (g)(13)(iii) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due. Separate data shall be reported for floor sweeping tobacco.

(h) *Daily report of data from buyers corrections account.* For Fire-cured, Dark air-cured, and Virginia sun-cured tobacco, each warehouseman shall keep a record and make reports on MQ-71, Summary of Buyers Corrections Account, showing for each sale day and for each buyer the total pounds of debits for the warehouse for short baskets, short weights, and returned baskets and the total pounds of credits for the warehouse for long baskets and long weights, as shown by the buyers corrections account, excluding billing errors, kept by the warehouseman.

(i) *Producer tobacco.* Producer tobacco (first sale) in possession of a warehouseman, resulting from long weights and long baskets, which has not previously been identified by a sale shall be recorded and reported in the same manner as a nonauction sale to a warehouseman who does not prepare a warehouse bill (floor sheet) and shall be reported on MQ-79, Dealer's Record.

(j) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.* For each marketing year, the warehouseman shall maintain copies of the bill-out invoice to the purchaser by grades showing the pounds purchased. In lieu of this requirement, the warehouseman may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) baskets from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchaser.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26823, Dec. 16, 1972; Amdt. 4, 40 FR 58445, Dec. 17, 1975; Amdt. 4, 48 FR 37606, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.97 Dealer's record and reports, excluding cigar tobacco buyers.

Each dealer, except as provided in § 724.98, or any other person as provided in paragraph (e) of this section, shall keep by kinds of tobacco the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided by this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number (if applicable) and the reporting dealer's identification number (if applicable) as well as the names of the warehouse and dealers involved in the transaction.

(a) *Report of dealer's name and address.* Each dealer shall properly execute and the marketing recorder shall detach and forward to the State ASCS office "Receipt for Dealer's Record" contained in MQ-79, which is issued to the dealer.

(b) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:

(A) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or

(B) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer of the tobacco, if different from the operator; or

(C) The seller if purchased as a nonauction purchase from a warehouseman or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.

(v) The pounds of tobacco purchased.

(vi) The gross purchase price.

(vii) The amount of penalty.

(viii) The amount deducted for the "No Net Cost Tobacco Account".

(ix) The quantity of tobacco purchased from a prior crop and carried over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of:

(A) The warehouse through which the tobacco was sold, if sold at a warehouse auction, or

(B)(i) The buyer if the tobacco was sold at a nonauction sale.

(ii) The date of sale.

(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(c) *Nonauction purchase.* (1) Each purchase of tobacco from a producer from a quota producing area shall be identified by a marketing card, issued for the farm, in accordance with § 724.81, on which the tobacco was produced unless an AMS inspection is obtained prior to purchase which shows that the tobacco being offered for sale is a kind not subject to marketing quotas. When a Form MQ-77 marketing card is used to identify a nonauction sale, the producer's signature shall be obtained on the reverse side of a sale memo which is a part of the Form MQ-77. A nonauction sale not identified by a marketing card shall be identified by a Form MQ-82 executed by a marketing recorder or other representative of the State committee. The dealer shall record each nonauction purchase of tobacco on Form MQ-79, Dealer's Record.

(2) The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Account or Fund as provided for in Part 1464 of this title. For nonauction purchases during the 1982-83 marketing year, the dealer shall deduct the producer contributions from the price paid to the producer for the tobacco, except for a purchase which is identified with a marketing card bearing the notation "No Price Support". For nonauction purchases which are made by the dealer from producers during the 1983-84 and subsequent marketing years, the dealer shall make a deduction in accordance with Part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. The amount of the deduction which is applicable to such kind of tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Account or Fund for each such marketing year.

(d) *Record and report of purchases and resales.* (1) Each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) Form MQ-79 shall be prepared and copy forwarded to the State ASCS office no later than the end of the calendar week in which such tobacco was purchased or resold including the original copy of any spoiled reports. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ-79 shall be prepared and a copy shall be forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale date of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports for all nonauction purchases shall be prepared and forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

(3) In addition to Form MQ-79, a Form MQ-79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a contribution to the No Net Cost Tobacco Account or Fund is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the time of forwarding the Form MQ-79 on which the purchase is recorded. A check, draft, or money order in the amount of the deduction recorded on Form MQ-79 (Supplemental) and drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS office at the same time as Form MQ-79 and MQ-79 (Supplemental).

(e) *Daily report to warehouseman for buyers' corrections account.* Notwithstanding the provisions of § 724.98, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly invoiced to him by the warehouseman, shall furnish to the warehouseman on a daily sales basis an adjustment invoice or buyer's settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouseman for that sale day.

(3) Such reports as required under paragraphs (e) (1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the purchasing dealer (if applicable) and the identification number of the warehouse (if applicable), where the purchase was made.

(f) *Final report for season.* Not later than April 1, each dealer who bought, or sold or had tobacco available for marketing during the current year, shall for each kind of tobacco:

(1) Show the word "final" on his final report, MQ-79, for the season, (2) report on such final MQ-79 for the season the quantity of tobacco on hand and its location, (3) permit its inspection by a representative of ASCS, and (4) provide for weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in paragraph (f)(4) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(g) *Delayed reports.* Notwithstanding the provision of paragraph (f) of this section, any dealer having tobacco transactions after April 1 shall make reports on MQ-79 at the end of each week as provided in paragraph (d)(2) of this section.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26824, Dec. 16, 1972; Amdt. 4, 48 FR 37606, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.98 Dealers exempt from regular records and reports, excluding cigar tobacco buyers.

Any dealer or buyer who acquired tobacco in the form in which tobacco ordinarily is sold by farmers and resells five percent or less of any such tobacco shall not be subject to the requirements of § 724.97 except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of paragraph (e) of § 724.97. A dealer or buyer whose resales in the form ordinarily sold by farmers exceed five percent of his purchases as a direct result of order buying for another dealer for a service fee may be exempt from the requirements of § 724.97 (except for requirements which relate to nonauction purchases from producers and requirements of paragraph (e) of § 724.97): *Provided*, That where deemed necessary the Director, or the State committee may require a report of all tobacco purchased by the dealer without regard to the exemption.

[40 FR 58446, Dec. 17, 1975, as amended by Amdt. 4, 48 FR 37607, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.99 Cigar tobacco buyer's records and reports.

(a) *Report of buyer's name and address.* Each buyer shall properly execute, detach, and promptly forward to the State ASCS office, "Receipt for Buyer's Record" contained in MQ-79 (CF&B), which is issued to the buyer.

(b) *Record of marketings.* A buyer shall keep records which provide the following information for each lot of each kind of tobacco purchased or sold by the buyer, including tobacco obtained from grading tobacco for producers or furnishing curing space, or stripping space.

(1) *Purchases.* (i) The name of:

(A) The operator of the farm on which the tobacco was produced; or

(B) The name and address of the seller, in the case of a sale by a person other than the farm operator.

(ii) The identification number of the farm at/from which the tobacco was purchased.

(iii) The date of purchase.

(iv) The pounds of tobacco purchased.

(v) The gross purchase price.

(vi) The amount of penalty.

(vii) The amount deducted for the "No Net Cost Tobacco Account or Fund."

(2) *Sale.* Each buyer shall maintain records which will show, by kind of tobacco, the disposition of tobacco purchased under paragraph (b)(1) of this section.

(3) The buyer shall make deductions for producer contributions to the No Net Cost Tobacco Account or Fund as provided for in Part 1464 of this title. For nonauction purchases during 1982-83 marketing year, the buyer shall deduct the producer contributions, from the price paid to the producer for the tobacco, except for a purchase which is identified with a marketing card bearing the notation "No Price Support." For nonauction purchases which are made by the dealer from producers during the 1983-84 and subsequent marketing year, the buyer shall make a deduction in accordance with Part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the marketing card used to identify the tobacco shows a converted penalty rate of 100 percent. The amount of the deduction which is applicable to such kind of tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Account or Fund for each such marketing year.

(c) *Identification of sale or marketing card, sale memo, and buyers record.* Each MQ-76 and each sale memo from an MQ-77 used to identify each sale of tobacco by a producer, including tobacco obtained under paragraph (b)(2) of this section, shall be properly executed by the buyer. The serial number of the MQ-76 marketing card or sale memo from an MQ-77 to identify such tobacco, shall be recorded on the buyer's copy of the MQ-79 (CF&B) and on the check register or check stub for the check written with respect to such tobacco.

(d) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ-79 (CF&L), Buyer's Record, showing by kinds all tobacco purchased by or for him from producers, including tobacco obtained under paragraph (b)(2) of this section. Such record and report shall show for each sale the sale date, the name of the farm operator (and the name and address of the person selling the tobacco if other than the farm operator), the serial number of the within quota marketing card (MQ-76), and from each excess card (MQ-77) the sale memo number used to identify the sale, the pounds of tobacco represented in the sale, the rate of penalty shown on the sale memo (MQ-77), and the amount of penalty. If no marketing card is presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall enter the word "None" in the space for the serial number of the marketing card (MQ-76) or sale memo (MQ-77), the applicable rate of penalty per pound shown in § 724.88 in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ-79 (CF&B), excess sale memos (MQ-77), and a remittance for all penalties shown by the entries on MQ-79 (CF&B) and on the excess sale memos (MQ-77) to be due shall be forwarded to the State ASCS office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(3) In addition to Form MQ-79 a Form MQ-79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a contribution to the No Net Cost Tobacco Account or Fund is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the time of forwarding the Form MQ-79 on which the purchase is recorded. A check, draft, or money order in the amont of the deduction recorded on Form MQ-79 (Supplemental) and drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS Office at the same time as Form MQ-79 and MQ-79 (Supplemental). However, buyers who purchase cigar-binder (type 54) will make such check, draft, or money order payable to "Wisconsin Cooperative Tobacco Growers Association Fund."

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 4, 48 FR 37607, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.100 Cigar tobacco buyers and loan organizations not exempt from regular records and reports.

No buyer shall be exempt from keeping records and making the reports required in this part. Any "loan" organization which receives tobacco from producers for the purpose of (a) selling it for the producer or (b) placing it under the Commodity Credit Corporation price support program shall keep the records, make the reports, and remit penalties in case of receiving such tobacco for sale.

§ 724.101 Records and reports of truckers and persons redrying, prizing, or stemming tobacco.

(a) Each trucker shall keep such records, by kinds of tobacco, as will enable him to furnish the State ASCS office a report with respect to each lot of tobacco received by him showing:

(1) The name and and address of the producer;

(2) The date of receipt of the tobacco;

(3) The number of pounds received; and

(4) The name and address of the person to whom it was delivered.

(b) Each person engaged in the business of redrying, prizing, or stemming tobacco for producers shall keep, by kinds of tobacco, such records as will enable him to furnish the Director a report showing:

(1) The information required above for truckers; and, in addition,

(2) The purpose for which the tobacco was received;

(3) The amount of advance made by him on the tobacco;

(4) The disposition of the tobacco; and

(5) Person to whom delivered and pounds involved.

§ 724.102 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, buyer, trucker, or as a person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 724.103 Failure to keep records and make reports or making false report or record.

(a) *Failure to keep records or make reports.* Under the provisions of section 373(a) of the act, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers who fail to make any report or keep any record as required, or who makes a false report or record, is guilty of misdemeanor, and upon conviction thereof shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouseman, dealer, or buyer who fails, upon being requested to do so, to remedy a violation(s) by submitting complete reports and keeping accurate records shall be subject to an additional fine not to exceed $5,000.

(b) *False representations—Warehousemen, dealers, and producers.* The penalties designated in paragraph (a) of this section are in addition to penalties prescribed by other criminal statutes including United States Code, title 18, section 1001, which provides for a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false certification on a new farm application or application for transfer of an allotment, false acreage report, altering a marketing card, falsely identifying tobacco or filing a false dealer or warehouse report.

(c) *Failure to obtain producer's marketing card or sale memo.* The failure of any dealer or warehouseman to obtain a producer's marketing card, MQ-76 or MQ-77, to identify a sale of producer tobacco or who fails to obtain and deliver to a representative of the county ASC committee a properly executed sale memo to cover a sale of producer tobacco identified by an MQ-77 shall constitute a failure to make a report.

§ 724.104 Examination of records and reports.

(a) *Examination.* For the purpose of ascertaining the correctness of any report made or record kept or of obtaining information required to be furnished, in any report, but not so furnished, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State executive director and by employees of the Office of Investigation and Office of Audit, and Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, upon written request by the State executive director, all such books, papers, records, basket tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check registers, check stubs, correspondence, contracts, documents, warehouse bill-out invoices, or daily summary journal sheet, and memoranda as the State executive director or the Director has reason to believe are relevant and are within the control of such person.

(b) *Orderly retention of records.* The records and reports required by this subpart including buyer invoices (bill-outs) and basket tickets, shall be kept in an orderly manner by sale day to facilitate examination and verification. In lieu of filing by sale dates, basket tickets may be filed in orderly manner by numerical order.

[37 FR 2746, Feb. 5, 1972, as amended by Amdt. 1, 37 FR 26824, Dec. 16, 1972; Amdt. 3, 39 FR 30822, Aug. 26, 1974; Amdt. 4, 48

FR 37607, Aug. 19, 1983; Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.105 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director or the Director.

(Approved by the Office of Management and Budget under control number 0560-0001)

(44 U.S.C. 3506)

[37 FR 2746, Feb. 5, 1972, as amended at 47 FR 745, Jan. 7, 1982]

§ 724.106 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, by all members of county and community committees, and all county office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

[Amdt. 4, 48 FR 37607, Aug. 19, 1983 and Amdt. 4, 49 FR 4367, Feb. 6, 1984]

§ 724.107 Warehouses authorized to retain producer marketing cards between sales.

Notwithstanding any other provision of this part, to facilitate the scheduling of farmers' tobacco to the warehouse, marketing cards with the permission of the producer may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(a) *Warehouses eligible to retain producer marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by ASCS a written request with the State committee (or county committee if designated by the State Committee).

(2) Agree to be responsible to ASCS for an amount of money equal to the amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Tobacco falsely identified for marketing by use of the producer's marketing card.

(ii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

(i) Name of farm operator;

(ii) Marketing card number;

(iii) Date marketing card obtained from producer; and

(iv) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request or, in the absence of a request, return it to the producer within seven (7) days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by ASCS for failure to comply with provisions of this agreement.

(b) *Penalties considered to be the responsibility of warehouseman.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State committee (or county committee if designated by the State committee) for authorization to retain producers' marketing cards at the warehouse, with grower permission, shall be responsible to ASCS for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties, provided the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Tobacco falsely identified for marketing by use of the producer's marketing card.

(2) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

[Amdt. 2, 38 FR 34109, Dec. 11, 1973]

PART 725—FLUE-CURED TOBACCO

Subpart—Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973-74 and Subsequent Marketing Years

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AUTHORITY: Sec. 301, 313, 314, 314A, 316, 316A, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 75 Stat. 469, as amended, 96 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65-66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314-1, 1314b, 1314b-1, 1314c, 1363, 1372-75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

Subpart—Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973-74 and Subsequent Marketing Years

SOURCE: 38 FR 27356, Oct. 3, 1973, unless otherwise noted.

GENERAL

§ 725.49 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 725) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0058 and 0560-0117.

[48 FR 40640, Sept. 8, 1983]

§ 725.50 Basis and purpose.

The regulations contained in this subpart are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), and are applicable to flue-cured tobacco for the 1973-74 and subsequent marketing years. They govern the establishment of farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the keeping of records and making of reports incident thereto. Notwithstanding the above acreage allotments and marketing quotas for the 1973-74 marketing year previously established under Subpart—Flue-cured tobacco 1970-71 and subsequent marketing years shall remain in effect. The applicability of the regulations for any marketing year subsequent to the 1973-74 marketing year is contingent upon the proclamation of a national marketing quota for such year pursuant to section 312(a) of the Act.

[38 FR 27356, Oct. 3, 1973, as amended at 42 FR 27566, May 31, 1977]

§ 725.51 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this title or chapter shall include current and later amendments to the referenced parts. Unless defined in this section the words or phrases defined in § 719.2 of this chapter shall have the same meaning when used in this part.

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(a-1) *Active flue-cured tobacco producer.* (1) Any person who shared in the risk of producing a crop of flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intention on a form approved by the Deputy Administrator.

(a-2) *Allowable floor sweepings.* The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of flue-cured tobacco at auction for the season for the warehouse involved.

(b) *Auction sale.* A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, including sale of all lots or baskets of tobacco at public auction in sequence at a given time.

(c) *Base period.* The five calendar years immediately preceding the year for which farm acreage allotments are currently being established.

(d) *Buyers corrections account.* The warehouse account of tobacco purchased at auction by the buyer, but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. This account shall include the pounds and amounts deducted resulting from short baskets and short weights, and pounds and amounts added resulting from long baskets and long weights, which buyers debit or credit to the warehouseman and support with adjustment invoices.

(e) *Community average yield.* The average yield in the community as determined by averaging the yields per acre for the three highest years of the five years 1959 to 1963, inclusive, except that if the yield for any of the three highest years is less than 80 percent of the average for the three years then that year or years shall be eliminated and the average of the remaining years shall be the community average yield.

(e-1) *Considered planted credit.* Credit which is assigned in the current year for an old farm as follows:

(1) The considered planted credit is the farm acreage allotment if, beginning in the 1984 crop year, flue-cured tobacco is marketed from the farm in the current year.

(2) If paragraph (e-1)(1) of this section is not applicable, the considered planted credit will be the sum of the acreage (limited to the farm allotment):

(i) Not planted because of a natural disaster,

(ii) Computed for pounds leased from the farm,

(iii) In eminent domain pool,

(iv) Reduced for overmarketing, and

(v) Reduced for violation of marketing quota regulations.

(f) *Current year.* The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

(g) *Dealer or buyer.* A person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers.

(h) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Effective farm acreage allotment.* The allotment determined under § 725.58.

(j) *Effective farm marketing quota.* The quota determined under § 725.60.

(k) *Excess tobacco for a farm.* The excess tobacco on a farm for the current year shall be the quantity of tobacco marketed in the current marketing year after 110 percent of the effective farm marketing quota has been marketed.

(l) *False identification.* False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which, in fact, was produced on a different farm;

(2) Tobacco was marketed or was permitted to be marketed in any mar-

keting year from a farm and was not identified by a tobacco marketing card for the farm;

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(l-1) *Family farm corporation.* A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or;

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (l-1)(1)(ii)(B) of this section and;

(2) One or more of the individuals specified in paragraph (l-1)(1) of this section participates in the direct management of the day to day farming operations of the corporation.

(m) *Farm acreage allotment.* The allotment determined in accordance with § 725.58.

(n) *Farm marketing quota.* The pounds determined by multiplying the farm acreage allotment by the farm yield.

(o) *Farm yield*—(1) *Old farm.* The farm yield for an old farm is that yield determined as provided in § 725.59.

(2) *New farm.* The farm yield for a new farm is that yield determined as provided in § 725.59.

(p) *Floor sweepings.* The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

(q) *Green weight.* The weight of tobacco which is in the form normally marketed by farmers prior to being redried, prized or processed.

(r) *Hogshead.* A container in which tobacco is packed and stored.

(s) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse (except floor sweepings which accumulate on the warehouse floor), as adjusted by the debits and credits to the buyers corrections account, and including floor sweepings purchased from another warehouse or dealer.

(t) *Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(u) *Marketing recorder or field assistant.* Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketings of tobacco.

(v) *Marketing year.* The period beginning July 1 of the year in which the tobacco is produced and ending June 30 of the following year.

(w) *New farm.* A farm for which a tobacco allotment is established in the current year and for which there is no tobacco history acreage in the base period.

(x) *Nonauction sale.* Any first marketing of tobacco other than by a sale at auction.

(y) *Old farm.* A farm on which there is tobacco history acreage in one or more years of the base period.

(z) *Overmarketings.* The pounds by which the pounds marketed exceed the effective farm marketing quota.

(z-1) *Planted credit.* Credit assigned in the current year, for a farm having a farm acreage allotment, for acreage which is planted.

(aa) *Pool.* A quantity of tobacco delivered to a marketing agent.

(bb) *Pound.* That amount of tobacco which would equal one pound standard weight.

(cc) *Preceding year.* The calendar year immediately preceding the year for which the allotments and quotas are established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

(dd) *Preliminary farm acreage allotment.* The allotment determined in accordance with § 725.56.

(ee) *Preliminary farm yield.* The yield determined for a farm as provided in § 725.57.

(ff) *Processed, Processing.* A method of preparing green weight tobacco for storage in which the tobacco may be green prized, redried, stemmed, tipped or threshed and the resulting product packed in a hogshead.

(gg) *Production record.* A record prepared by a processor to account for the processing of tobacco.

(hh) *Resale.* The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

(ii) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(jj) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(jj-1) *Shared in risk of production.* Involvement in the production of flue-cured tobacco by a person who, for any crop year before 1987, meets all of the conditions as set forth in either paragraph (jj-1) (1) or (2) of this section, or, for the 1987 or any subsequent crop year, meets the conditions as set forth in paragraph (jj-1)(l) of this section:

(1) *Investing producer.* A person who:

(i) Invests in the production of a crop of flue-cured tobacco in an amount which is not less than 20 percent of the proceeds of the sale of the crop;

(ii) Depends solely on a share of the proceeds from the marketing of the tobacco for the return on the investment;

(iii) Waits until such crop of flue-cured tobacco is marketed to receive any return on the investment; and

(iv) Maintains records, for a period of three years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of paragraph (jj-1)(1) of this section have been met.

(2) *Lessor.* A person who:

(i) Owns a farm having a flue-cured tobacco allotment and quota;

(ii) Leases such allotment and quota to another person for use in producing a crop of flue-cured tobacco (the tobacco may be produced on the lessor's farm or on a farm operated by the lessee);

(iii) Depends solely on a specified share of the proceeds from the marketing of such crop of flue-cured tobacco (the tobacco which is produced using the leased allotment and quota) for payment of the rental for such allotment and quota;

(iv) Waits until such crop of flue-cured tobacco is marketed to receive any payment of the rental for such allotment and quota; and

(v) Maintains records, for a period of three years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of paragraph (jj-1)(2) of this section have been met.

(kk) *Strip, scrap, stem.* Types of products resulting from processing of tobacco where the tobacco is "tipped" and "threshed."

(ll) *Suspended sale.* Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

(ll-1) *Tillable cropland.* Cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county committee determines can be planted to crops without unusual preparation or cultivation.

(mm) *Tobacco.* Flue-cured tobacco, types 11, 12, 13, and 14, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture.

(nn) *Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

(oo) *Tobacco in the form not normally marketed by producers.* Tobacco leaves, stems, strips, scrap or parts thereof that are the result of green tobacco having been redried, green prized, stemmed, tipped, threshed or otherwise processed.

(pp) *Trucker.* A person who trucks or otherwise hauls tobacco for a producer, or any other person.

(qq) *Undermarketings.* The number of pounds by which the effective farm marketing quota is more than the number of pounds marketed.

(rr) *Warehouseman.* A person who engages in the business of holding sales of tobacco at public auction.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 2, 40 FR 41514, Sept. 8, 1975; Amdt. 15, 45 FR 56005, Aug. 22, 1980; Amdt. 4, 47 FR 56476, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983; 49 FR 33623, Aug. 24, 1984]

§ 725.52 Location of farm for administrative purposes.

(a) *County.* The location of a farm in a county for administrative purposes shall be as provided in Part 719 of this chapter.

(b) *Community.* (1) A farm that is geographically located entirely within one community shall be assigned to that community.

(2) A farm that is geographically located in one county and in more than one community shall be assigned to the community (i) where the principal dwelling is located, or (ii) where the largest amount of cropland is located, if there is no such dwelling.

(3) A farm that is geographically located in more than one county and in more than one community shall be assigned to the community in the county in which the farm is located for administrative purposes under Part 719 of this chapter in which the principal dwelling is located, or if the principal dwelling is not located in such county, or there is no such dwelling, to the community in such county having the largest amount of cropland.

§ 725.53 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* All prescribed rounding shall be according to the provisions of Part 793 of this chapter.

(b) *Allotments.* Farm acreage allotment shall be determined in hundredths of an acre.

(c) *Yields.* Yields shall be determined in whole pounds.

(d) *Percentage reduction for violation.* A percentage reduction in an allotment for violation of this part shall be determined in tenths of a percent.

[42 FR 27566, May 31, 1977]

§ 725.54 Supervisory authority of State ASC committee.

The State committee may take any action required by these regulations which has not been taken by a county committee. The State committee may also (a) correct, or require a county committee to correct, any action taken by a county committee which is not in accordance with these regulations, or (b) require a county committee to withhold taking any action which is not in accordance with these regulations.

§ 725.55 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

ACREAGE ALLOTMENTS, HISTORY ACREAGE, MARKETING QUOTA AND YIELDS FOR OLD FARMS

§ 725.56 Determination of preliminary farm acreage allotments.

(a) *Farms requiring a determination.* A preliminary farm acreage allotment shall be determined for the current year for each farm which has tobacco history acreage for the base period as determined in accordance with the provisions of § 725.73.

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year: *Provided,* That in 1983 and at five-year intervals thereafter, the preliminary farm acreage allotment shall be the farm acreage allotment for the preceding year divided by a factor determined by averaging the yields for the county, as determined by the Deputy Administrator, Program Planning and Development, for the most recent five-year period and dividing the result by the average of the yields for the county as determined by the Deputy Administrator, Program Planning and Development, for the five years 1959 through 1963. If the computed factor is outside the range of 1.0000 to 1.3500, the factor shall be increased to 1.0000 or decreased to 1.3500, as applicable: *Provided further*, That in the fifth year of any five-year period beginning with 1983 the factor shall be divided by the factor which resulted from the computation made in accordance with the first proviso of this paragraph for the previous five-year period.

[Amdt. 4, 47 FR 56477, Dec. 17, 1982 and 48 FR 40640, Sept. 8, 1983]

§ 725.57 Determination of preliminary farm yields.

(a) *Old farms.* The preliminary farm yield for an old farm for the current year shall be determined as follows:

(1) *Farm having preliminary farm acreage allotment.* The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year. However, for 1983 and at five-year intervals thereafter, the preliminary farm yield shall be the yield determined by multiplying the preliminary farm yield for the farm for the preceding year by the factor which is used in determining preliminary farm acreage allotments, as provided for in § 725.56.

(2) *Farm not having preliminary farm acreage allotment.* The preliminary farm yield shall be determined by dividing the farm yield which is determined in accordance with the provisions of § 725.59 by the national yield factor for the current year.

(b) *New farms.* The preliminary farm yield for a new farm shall be determined by dividing the farm yield determined in accordance with § 725.59(b) for such farm by the national yield factor applicable for the year in which the new farm allotment was established.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 4, 47 FR 56477, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.58 Determination of farm acreage allotments and effective farm acreage allotments.

(a) *Farm acreage allotments.* The farm acreage allotment shall be determined by multiplying the national acreage factor as determined by the Secretary for the current year by the preliminary farm acreage allotment for the current year and adjusting the result as follows:

(1) *Upward adjustment.* Add the:

(i) Acreage approved in accordance with the provisions of § 725.66 in order to adjust for an inequity or to correct an error;

(ii) Acreage determined by dividing the pounds of quota which are purchased in the current year by the farm yield; and

(iii) Acreage determined by dividing the pounds of forfeited quota which are approved for adjustment from the forfeiture pool by the farm yield.

(2) *Downward adjustment.* Subtract the:

(i) Acreage determined by dividing the pounds of quota sold in the current year by the farm yield; and

(ii) Acreage of forfeited allotment.

(b) *Effective farm acreage allotment.* The effective farm acreage allotment for the current year shall be determined by dividing the effective farm marketing quota by the farm yield.

[Amdt. 4, 47 FR 56477, Dec. 17, 1982 and 48 FR 40640, Sept. 8, 1983]

§ 725.59 Determination of farm yields.

(a) *Old farms.* The farm yield for an old farm shall be:

(1) *Farm with preliminary farm yield.* Determined by multiplying the preliminary farm yield by the national yield factor for the current year.

(2) *Farm without preliminary farm yield.* Determined in the same manner as the farm yield for a new farm as provided in paragraph (b) of this section.

(b) *New farms.* The farm yield for a new farm shall be that yield, which the county committee determines for the farm taking into consideration (1) the soil and other physical factors affecting the production of tobacco on the farm, and (2) the farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 4, 47 FR 56477, Dec. 17, 1982; 48 FR

40640, Sept. 8, 1983; 49 FR 33623, Aug. 24, 1984]

§ 725.60 Determination of effective farm marketing quotas.

The effective farm marketing quota shall be the farm marketing quota adjusted as follows:

(a) *Upward adjustment.* Add:

(1) The smaller of (i) the undermarketings from the preceding marketing year, or (ii) farm marketing quota for the preceding year plus the pounds of quota which are transferred to the farm by lease in the preceding year; and

(2) The pounds of quota which are transferred to the farm by lease in the current year.

(b) *Downward adjustment.* Subtract:

(1) The pounds of quota which are overmarketed from the preceding marketing year;

(2) The pounds of quota which are overmarketed from any year before the preceding year which have not been subtracted when determining the effective farm marketing quota in a prior year;

(3) The pounds of quota which are transferred from the farm by lease in the current year; and

(4) The pounds of quota which are reduced in the current year as a result of a violation in a prior year as provided for in § 725.98.

[Amdt. 4, 47 FR 56477, Dec. 17, 1982 and 48 FR 40640, Sept. 8, 1983]

§ 725.61 [Reserved]

§ 725.62 Determination of undermarketings and overmarketings for allotments while in eminent domain pool.

The farm marketing quota established for an allotment which is in the eminent domain pool for the current year shall be considered as zero for the purpose of determining undermarketings and overmarketings.

§ 725.63 Determination of allotments and yields for divided farms.

(a) *Allotments.* Farm acreage allotments for divided farms shall be divided pursuant to the provisions of Part 719 of this chapter. History acreages and other basic data shall be apportioned among the divided tracts as provided in Part 719 of this chapter, except as provided in paragraphs (b) and (c) of this section.

(b) *Preliminary farm yields.* The preliminary farm yields for the tracts resulting from a division of a parent farm shall be the same as the preliminary farm yield established for the parent farm: *Provided,* That if the contribution method of division is used and a preliminary farm yield was established for a tract before the tract become a part of the parent farm, the preliminary farm yield shall be the preliminary farm yield established for the tract, as adjusted by the factor(s) applied to the preliminary farm yield of the parent farm, which is determined in accordance with the provisions of § 725.57, after the tract became a part of the parent farm.

(c) *Farm yield.* The farm yield for a tract separated from a parent farm by division shall be determined by multiplying the preliminary farm yield by the national yield factor for the current year.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 4, 47 FR 56477, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.64 Determination of allotments and yields for combined farms.

(a) *Allotments.* Farm acreage allotments and history acreages and other basic data for combined farms shall be computed for the base period in accordance with Part 719 of this chapter, except as provided in paragraph (b) of this section.

(b) *Yields.* The farm yield for a combined farm shall be the weighted average of the farm yields established for the parent farms. The preliminary farm yield for the combined farm shall be determined by dividing the farm yield for the combined farm by the national yield factor for the current year.

§ 725.65 Determination of undermarketings and overmarketings for reconstituted farms.

(a) *Divisions.* Undermarketings and overmarketings of the parent farms shall be apportioned among the divided tracts in the same ratio as the marketing quotas are established for the divided tracts.

(b) *Combinations.* Undermarketings of the parent farm shall be the total undermarketings of the combined farms and overmarketings of the parent farm shall be the total overmarketings of the combined farms.

(c) *Apportioning Carryover Marketing-Division.* Where carryover tobacco produced on a parent farm is marketed after the effective date of a reconstitution, such marketing shall be charged to the divided tracts in the same ratio as the marketing quotas are established for the divided tracts or as the county committee determines that:

(1) The proceeds from such marketing is received by the owner or operator of one or more of the divided tracts, or (2) the owners of the divided tracts agree.

§ 725.66 Correction of errors and adjusting inequities in acreage allotments for old farms.

(a) *General.* The farm acreage allotment for an old farm may be adjusted to correct an error or adjust an inequity if the county committee determines, with the approval of a representative of the State committee, that the adjustment is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the community in which the farm is located. The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total of the preliminary farm acreage allotments in each State to the national total of preliminary farm acreage allotments. Correction of errors shall be made out of that portion of the national reserve held at the national level.

(b) *Basis for adjustment.* Acreage increases to adjust inequities in acreage allotments shall be made on the basis of the past farm acreage and past farm acreage allotments of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments under this paragraph shall not exceed the acreage apportioned the county for such purpose.

(c) [Reserved]

(d) *Approved acreage.* Acreage approved for a farm under this section becomes a part of the farm acreage allotment. The farm marketing quota for such farm shall be adjusted by multiplying the adjusted farm acreage allotment by the farm yield.

[38 FR 27356, Oct. 3, 1973, as amended at 42 FR 27566, May 5, 1977; 49 FR 33623, Aug. 24, 1984]

§ 725.67 Time for making reduction of acreage allotment for violation of the marketing quota regulations.

Any reduction in the farm acreage allotment for a farm for the current year required for any of the reasons provided in § 725.98 shall be made no later than April 1 of the current year. If the reduction is not made by such date for the current year, the reduction shall be in the farm acreage allotment next established for the farm, but no later than by April 1 in the subsequent year: *Provided,* That no reduction shall be made in the acreage allotment for any farm for a violation if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

§ 725.68 Allotments and yields for farms acquired under right of eminent domain.

(a) *Allotments and marketing quotas.* The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and reallocation from the pool shall be administered as provided in Part 719 of this chapter. Where all or a part of an allotment is pooled, all or a proportionate part of the farm marketing quota shall be pooled.

(b) *Yields for receiving farms.* The farm yield for a farm to which pooled acreage allotment and marketing quota are transferred shall be determined by dividing the farm marketing quota (including the transferred farm marketing quota) by the farm acreage allotment (including the transferred farm acreage allotment). The preliminary farm yield shall be determined by dividing the farm yield by the national yield factor for the current year.

(c) *Undermarketings and overmarketings.* Undermarketings of the farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm.

(d) *Release and reapportionment.* The displaced owner of a farm may not later than the date established and publicized by the State committee, release in writing to the county committee for the current year all or part of the acreage for the farm in a pool under Part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments for flue-cured tobacco. The marketing quota for the pooled acreage shall be adjusted downward by the amount determined by multiplying the acreage released by the farm yield for the farm acquired by eminent domain. The county committee may reapportion, not later than the date established and publicized by the State committee the released acreage or any part of it to other farms in the county on the basis of past acreage of tobacco, land, labor, and equipment available for the production of tobacco, crop rotation practices, and soil and other physical factors affecting the production of tobacco. The marketing quota for the farm to which released acreage is reapportioned shall be adjusted upward by the amount determined by multiplying the reapportioned acreage by the farm yield for such farm. The allotment acreage reapportioned shall not, for purposes of establishing future farm allotments, be regarded as planted on the farm to which the allotment was reapportioned. No release and reapportionment of allotment acreage hereunder shall be the result of any private negotiations between individuals. Any acreage released shall be released to the county committee and such acreage shall be reapportioned only by the county committee.

[38 FR 27356, Oct. 3, 1973, as amended at 42 FR 27566, May 5, 1977]

§ 725.69 Determination of acreage allotments for new farms.

(a) The acreage allotment established for all new farms in any crop year shall not exceed the national acreage reserved for new farms. Within such reserve, the acreage allotment for a new farm shall be that acreage which the county committee, with approval of the State committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That the acreage allotment so determined shall not exceed the smaller of one acre or 50 percent of the average of the acreage allotments established for not less than two nor more than five old farms which are similar with respect to land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco.

(b) *Written application.* The farm operator must file an application for a new farm allotment at the office of the county committee where the farm is administratively located on or before February 15 of the year for which the new farm allotment is requested.

(c) *Eligibility requirements for operator.* A new farm allotment may be established if each of the following conditions is met:

(1) *Owner and operator of the farm.* The operator shall be the sole owner of the farm. For the purpose of applying this paragraph (c)(1) a person who owns only a part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner and operator of a farm which they jointly own.

(2) *Interest in another farm.* The farm operator shall not own or have an ownership interest in, or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4) *Income requirement.* The operator must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products.

(i) *Computing operator's income.* The following shall be considered in computing operator's income:

(*a*) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry or other agricultural products produced for home consumption or other use on the farm. The estimated return from the production of the requested new farm allotment shall not be included.

(*b*) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(*c*) *Spouse's income.* The spouse's farm and nonfarm income shall be used in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm. Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(5) *Experience.* Operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least two of the 5 years immediately preceding the year for which the new farm allotment is requested. If the operator was in the armed services during the 5-year period, the period shall be extended 1 year for each year of military service during the 5 years. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application.

(6) *Operator has not sold or forfeited allotment.* During the current or the four preceding years the operator has not sold or forfeited any flue-cured tobacco allotment from any farm.

(d) *Eligibility requirements for the farm.* A new farm allotment may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment an allotment or quota for any kind of tobacco.

(2) *Available land, type of soil, and topography.* The available land, type

of soil, and topography of the land on the farm must be suitable for tobacco production. Also continuous production of tobacco must not result in an undue erosion hazard.

(3) *Farm includes land formerly having a tobacco acreage allotment.* A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the four preceding years, the farm was constituted as any part of a farm for which an acreage allotment had been established and for which the current or a former owner:

(i) Sold all of the tobacco acreage allotment, or

(ii) Did not, as provided in Part 719 of this chapter, retain any of the tobacco acreage allotment for such land through use of the designation by landowner method of division when the allotment for such land was determined as a result of a farm reconstitution.

(4) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment was pooled pursuant to Part 719 of this chapter, which is subsequently returned to agricultural production, shall not be eligible for a new farm allotment for a period of 5 years from the date the former owner was displaced.

(5) *Downward adjustment.* The acreage allotments established as provided in this section for each kind of tobacco shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms.

(6) *False information.* Any new farm acreage allotment which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the allotment was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be cancelled effective for the current crop year except where the provisions of § 725.70(d) apply.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 1, 39 FR 30822, Aug. 26, 1974; Amdt. 4, 47 FR 56477, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983; 49 FR 33623, Aug. 24, 1984]

§ 725.70 Approval of allotments and marketing quotas, and notices to farm operators.

(a) *Review by State committee.* All farm acreage allotments, yields, and marketing quotas shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination made under these regulations. All acreage allotments, yields, and marketing quotas shall be approved by a representative of the State committee, and no official notice of acreage allotment and marketing quota shall be mailed to a farm operator until such allotment and marketing quota has been so approved, except that revised notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage or marketing quota, or (2) of allotment reductions due to failure to return marketing cards where a satisfactory report of disposition of tobacco is not otherwise furnished.

(b) *Notice to farm operator.* An official notice of the effective farm acreage allotment and the effective farm marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farms shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. Insofar as practical, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of the notice of allotment and marketing quota certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment is established.

(c) *Mailing notices.* If the records of the county committee indicate that the acreage allotment and marketing quota established for any farm may be changed because of (1) a violation of the marketing quota regulations for prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notices may be delayed: *Provided,* That the notice of allotment and marketing quota for any farm shall be mailed no later than April 1 of the current year.

(d) *Allotment erroneous notice.* If the official written notice of the farm acreage allotment and marketing quota issued for any farm erroneously stated an acreage allotment larger than the correct effective farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for the current marketing year only, if the county committee determines (with the approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) the operator, relying upon such notice and acting in good faith (i) materially changes his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) and (ii) has planted an acreage of tobacco in excess of the correct effective farm acreage allotment.

(e) *Marketing quota erroneous notice.* If the official notice of acreage allotment and marketing quota issued for a farm erroneously stated a marketing quota larger than the correct effective farm marketing quota, the marketing quota shown on the erroneous notice shall be deemed to be the marketing quota and the basis for marketing quota penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) had planted tobacco on the farm and was not notified of the correct farm marketing quota prior to planting the tobacco. Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota for the farm.

§ 725.71 Application for review.

(a) *If marketing quotas are in effect.* Any producer who is dissatisfied with the farm acreage allotment and farm marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file, application in writing with the ASCS county office to have such allotment and quota reviewed by a review committee. The procedure governing the review of farm acreage allotments and marketing quotas is contained in Part 711 of this chapter, which is available at the ASCS county office.

(b) *If marketing quotas are not in effect.* Any producer who is dissatisfied with the farm acreage allotment may request reconsideration of such allotment in accordance with Part 780 of this chapter, Appeal Regulations, and amendments thereto, which are available in the county ASCS office.

§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.

(a) *General.* Effective for 1982 through 1986 crop years with respect to a lease, and for the 1983 and subsequent crop years with respect to a sale, a flue-cured tobacco marketing quota, including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter, may be transferred between farms within a county by sale or by lease. For the 1983 through 1986 crop years, a flue-cured tobacco marketing quota also may be transferred by lease to a farm in an adjoining county within the same State when the State committee authorizes the county committee to approve the transfer of such quota after June 15 if the lessor has suffered a loss of flue-cured tobacco as a result of a flood, hail, wind, tornado, or other natural disaster. Only the lessor and lessee (or any attorney, trustee, bank, or other agent or representative, who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for, a transfer of flue-cured tobacco marketing quota by lease.

(b) *Sale.* If the transfer is by sale, the transfer shall be based on part or all of the farm poundage quota. The maximum quota that may be transferred is the farm poundage quota.

(c) *Lease.* If the transfer is by lease, the transfer shall be based on a portion or all of the effective farm poundage quota. The maximum quota that may be transferred is the effective farm poundage quota.

(d) *Transfer provisions*—(1) *Accumulation of quota.* A transfer shall not be approved if the county committee determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately leasing to and from the farm for two or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(2) *Subleasing.* In order to determine whether there is any subleasing of an allotment and quota, the current year is divided into two periods, the period up to and including June 15 and the period after June 15. The county committee shall not appprove a transfer during either period if the effect would be both a transfer to and from the farm during the same period: *Provided,* That a transfer may be approved within any such period if an allotment and quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive allotment and quota by lease.

(3) *Lessor farm.* A transfer of quota from a farm by lease shall not be approved:

(i) *Purchased and/or reallocated quota.* If the pounds of quota being transferred exceed the difference obtained by subtracting from the effective farm marketing quota the total pounds of quota purchased and/or reallocated from forfeited quota in the current and two preceding years, as adjusted to reflect both changes in county farm yields as provided in § 725.56 and changes in national acreage factors which have occurred since each respective purchase and/or reallocation of quota: *Provided,* That this provision shall not apply to a transfer which is filed after June 15 under the natural disaster provisions of this section.

(ii) *New farm.* If the farm is a new farm.

(iii) *Reduction pending.* If consideration of an indicated violation is pending which may result in an allotment and quota reduction for the farm for the current year. However, if the county committee determines that a decision will not be made on the pending case on or before April 1, a 1-year transfer may be approved.

(iv) *Filed after June 15.* If the transfer agreement is filed after June 15 unless the county committee in the county in which the farm is located for administrative purposes is authorized to permit leasing after June 15 in accordance with the natural disaster provisions of this section and the county committee determines that the:

(*a*) Farm has suffered a loss of 10 percent or more of the expected production from the acreage of flue-cured tobacco planted for harvest in the current year.

(*b*) Producer made reasonable and customary efforts to produce the effective farm marketing quota.

(*c*) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title.

(v) *Consent of lienholder.* For a multiple year lease if the farm is subject to a lien, unless the lienholder agrees in writing to the transfer.

(vi) *Certification.* Unless, for any transfer which is to be effective for either the 1985 or 1986 crop year, the farm owner has filed the certification provided in paragraph (g) of this section.

(vii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid: *Provided,* That this provision shall not apply if the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(viii) *Forfeiture pending.* To the extent that forfeiture of such allotment and quota is expected to become final before April 15.

(4) *Lessee farm.* A transfer of quota to a farm by lease shall not be approved:

(i) *Tillable cropland limitation.* If the pounds of quota being transferred plus the pounds of quota previously transferred to the farm by lease exceed the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of tillable cropland by the farm yield: *Provided,* That this provision shall not be applicable to a transfer of quota which is filed after June 15 in accordance with the natural disaster provisions of this section.

(ii) *Current allotment.* Unless the farm has a current flue-cured tobacco farm acreage allotment (i.e., old farm or new farm allotment). The effective quota on the farm may be zero pounds before the transfer of quota to the farm.

(iii) *Filed after June 15.* If the transfer agreement is filed after June 15:

(*a*) Unless the producers on the farm qualify for price support under the provisions of Part 1464 of this title; and

(*b*) The pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

(iv) *Certification.* Unless, for any transfer which is to be effective for either the 1985 or 1986 crop year, the lessee has filed the certification provided in paragraph (g) of this section.

(5) *Selling farm.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previous purchases and/or reallocated quota.* If the farm marketing quota includes quota that was bought, and/or reallocated from quota which has been forfeited and the purchase and/or reallocation became effective during the current year or in the four preceding years: *Provided,* That this provision shall not be applicable if the quota being sold was purchased in such period, if forfeiture of such quota may be required by § 725.74, and if the pounds of quota being transferred do not exceed the pounds of quota for which forfeiture otherwise is required in accordance with the provisions of § 725.74.

(ii) *Reduction pending.* If consideration of an indicated violation is pending which may result in an allotment and quota reduction for the farm for the current year. However, if the county committee determines that a decision will not be made on the pending case on or before April 1, a transfer may be approved.

(iii) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the allotment and quota in order to prevent forfeiture.

(iv) *Consent of lienholder.* If the farm is subject to a lien unless the lienholder agrees in writing to the transfer: *Provided,* That consent of a lienholder is not required for a transfer of the pounds of quota for which forfeiture otherwise is required in accordance with the provisions of § 725.74.

(v) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: *Provided,* That this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the allotment and quota are applied against the claim and the county committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(6) *Buying farm.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producer.* Unless the buyer is an active flue-cured tobacco producer.

(ii) *Tillable cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease, exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of tillable cropland by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or any of the four preceding years or two years if such sale was to prevent a forfeiture of the quota.

(iv) *Installment payment option.* Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(e) *Transfer agreement.* In order for a transfer of allotment and quota by lease or sale to be approved in the current year the transfer must be:

(1) *Form.* Recorded on Form ASCS-375.

(2) *Signatures.* Agreed upon and signed by:

(i) *Lease.* The owner of the transferring farm and the owner or operator of the receiving farm.

(ii) *Sale.* The owner of the selling farm and an active flue-cured tobacco producer who is the buyer. If the buyer is neither owner or operator of the farm to which the allotment and quota will be assigned, the owner or operator of the farm must give written consent for the allotment and quota to be assigned to the farm.

(iii) *Witness.* An authorized witness shall be a member of a State or county committee or an ASCS employee. Each person whose signature is required by either paragraph (e)(2) (i) or (ii) of this section must sign in the presence of an authorized witness, except that when any such person whose signature is required is ill, infirm, resides in a distant area, or is in a similar hardship situation, the requirement of a witness may be waived provided the county executive director mails Form ASCS-375 to such person for the required signature.

(3) *Where to file.* Filed in the county ASCS office which serves the county in which the transferring farm is located for administrative purposes.

(4) *When to file.* Filed on or before:

(i) *Lease.* April 15: *Provided,* That a transfer agreement filed on or before June 15 may be considered to have been filed on April 15 if the county committee, with concurrence of the State committee, determines that on or before April 15 the lessee and lessor agreed to transfer the quota but the transfer agreement was not filed timely as the result of conditions beyond the control of either the lessee or lessor: *Provided further,* That a transfer may be approved if the transfer agreement is filed on or before November 15 in accordance with the natural disaster provisions of this section.

(ii) *Sale.* June 15.

(f) *Period of lease.* A transfer by lease may be for a multiple-year period: *Provided,* That such lease shall not be for any of the 1987 and subsequent crop years and shall be limited to the current crop year if the transfer agreement is filed after June 15 of any year in accordance with paragraph (l) of this section.

(g) *Compliance statement of lease.* In order for a transfer of an acreage allotment and marketing quota by lease to be valid for the 1985 or 1986 crop year, none of the consideration for the lease may be paid to the lessor prior to the first marketing of tobacco produced on the lessee farm in the current year, either directly or indirectly in any form, including a loan by the lessee to the lessor, the endorsement of a note by the lessee for the lessor, or any other similar arrangement which represents the anticipated income for the lease: *Provided*, That the consideration for the lease may be paid on or after July 1 of the current year if no tobacco has been or will be harvested from the lessee farm in the current year. Before the county committee may approve the transfer agreement, the parties to the lease shall certify on a form prescribed by the Deputy Administrator that they are in compliance with the provisions of this section.

(1) *Lessor*. The next flue-cured tobacco allotment established for the lessor farm shall be reduced by that percentage which the leased quota was of the flue-cured tobacco farm marketing quota for the farm in the year of the lease.

(2) *Lessee*. The lessee shall be ineligible for price support and a "No Price Support" marketing card shall be issued for the farm for marketing the current year crop of flue-cured tobacco which is marketed after the determination is made: *Provided*, That a "No Price Support" marketing card shall be issued in a year subsequent to the first year such card is issued if the cumulative pounds of tobacco marketed with the "No Price Support" marketing card are less than the pounds leased as the result of a false certification: *Provided further*, That after the cumulative marketings identified with the "No Price Support" marketing card issued for the farm are equal to or greater than the pounds leased as a result of a false certification, the marketing card may be exchanged at the county ASCS office for a marketing card without such notation if the farm and producer are otherwise eligible for price support.

(h) *Approval or disapproval of a transfer agreement*. The county committee shall approve or disapprove each transfer agreement. The county committee shall approve each transfer agreement which meets the eligibility conditions as set forth in this section: *Provided*, That the county committee may delegate authority to the county executive director or other county office employee to act on behalf of the county committee and approve a transfer agreement which meets the eligibility conditions as set forth in this section. Such delegation of authority may authorize the county executive director or county office employee to approve any transfer agreement or the delegation of authority may be limited to approval of either transfers by lease or transfers by sale. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination*. Any approval or disapproval by the county committee of a transfer agreement should be made within 30 days after the transfer agreement is filed with the county committee unless additional time is required as the result of conditions beyond the control of the county committee. However, if an agreement is filed after June 15 which provides for the sale of an allotment and quota, a transfer agreement shall not be approved until the next year's allotment and quota is computed for the selling farm. In addition, if a marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(2) *Effective date*. An approved transfer agreement shall become effective during the current crop year, except that if an agreement to sell an allotment and quota is filed after June 15 of the current year, such agreement shall become effective for the next crop year.

(i) *Allotment and quota after transfer by lease*. The effective farm marketing quota and the effective farm acreage allotment shall be determined for both the lessee farm and the lessor farm in accordance with the provisions of §§ 725.58 and 725.60.

(j) *Apportionment of data and determination of allotment and quota after transfer of quota by sale*—(1) *Apportionment of data for the selling farm*. The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The planted and considered planted acres for the base period;

(ii) The history acres for the base period;

(iii) The farm acreage allotment for the current year and for the base period;

(iv) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(v) The pounds of quota which have been transferred from the selling farm by lease in the current year;

(vi) The acres of allotment which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(vii) The pounds of quota transferred to the farm by lease in the previous year;

(viii) The previous year's farm marketing quota;

(ix) The previous year's effective farm marketing quota; and

(x) The previous year's marketings.

(2) *Apportionment of data for the buying farm.* The pounds of farm marketing quota which have been purchased shall be divided by the farm yield for the buying farm in order to determine the farm acreage allotment for the buying farm. The buying farm's share of other farm data shall be determined by subtracting the acres or pounds, as applicable, which are retained on the selling farm from the acres or pounds which were established for the selling farm before the current sale of quota: *Provided,* That the acres computed for the acres of reduction resulting from a marketing quota violation for the buying farm shall be multiplied by a factor determined by dividing the farm yield of the selling farm by the farm yield of the buying farm in order to determine the acres of reduction from the buying farm for the current year: *Provided further,* That the pounds of quota transferred from the selling farm by lease and/or the acres of allotment reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which are leased, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(3) *Allotment and quota.* After adjusting the data in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined in accordance with §§ 725.58 and 725.60 for both the buying farm and the selling farm.

(k) *Effect on price support eligibility.* If a lease agreement is filed after the farm operator reports the acreage of tobacco on the farm in the current year, the effective farm acreage allotment which has been determined prior to the approval of the transfer will be used in determining price support eligibility for the farm.

(l) *Natural disaster.* (1) *State committee authorization.* Notwithstanding any other provision of this section, the State committee may, for the 1983 through 1986 crops, authorize the county committee to approve a transfer of quota by lease which is filed after June 15 if:

(i) *County committee determination.* The county committee of the county in which the lessor farm is located determines that as a result of drought, hail, wind, excessive rain, tornado, or other natural disaster, the county has suffered a loss of 10 percent or more of the expected yield from the acreage of flue-cured tobacco planted for harvest in the current year and the State committee concurs in such determination.

(ii) *County committee recommendation.* The county committee of the county in which a natural disaster loss occurred recommends to the State committee that the county committee be authorized to approve a transfer of a quota by lease when filed after June 15, if the agreement otherwise complies with the provisions of this section.

(iii) *Tobacco program not impaired by transfer.* The State committee determines that transfer of quota after June 15 will not impair the effective operation of the tobacco marketing quota or price support program.

(2) *Eligible farms.* In any county for which a transfer of quota is authorized after June 15 because of disaster conditions, a lessor farm may transfer quota by lease after June 15 to a lessee farm in the same county or in an adjoining county within the State if such farms otherwise meet the eligibility requirements specified in this section.

(3) *Adjoining county.* As used in this section, the phrase "adjoining county" means a county having a common border with another county in the same State if such common border is more than the point at which intersecting lines meet.

(m) *Carryover tobacco.* If tobacco is marketed after the entire farm marketing quota of the producing farm has been transferred by sale, the tobacco shall be considered as having been marketed on each farm to which farm marketing quota was transferred by sale in accordance with a transfer agreement filed after June 15 of the last year in which a farm marketing quota was established for the producing farm. Such marketing shall be prorated to each farm in proportion to the pounds of farm poundage quota purchased by each farm. If there was more than one farm to which a farm marketing quota was transferred by sale, the marketing may be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(n) *Farm division after transfer by lease.* If a farm is divided after there has been a transfer of a marketing quota to the farm by lease, the transferred quota shall be divided in the manner which is designated in writing by the lessee. In the absence of a written designation, the leased quota shall be apportioned in the same manner as the farm acreage allotment of the parent farm.

(o) *Multiple year lease.* The acreage allotment and/or marketing quota on the lessee farm having a multiple-year lease shall be adjusted for each year for which a transfer agreement is in effect to reflect any change in the farm yield or to reflect any decrease in the national acreage factor which causes the farm marketing quota established for the lessor farm to be less than the pounds of quota which have been transferred to the lessee farm.

(p) *Cancellation of transfer.* (1) A transfer of allotment and quota under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county committee. For the purpose of determining any overmarketings and undermarketings from the farms, and for the purpose of determining eligibility for price support and marketing quota penalties, the cancellation shall be effective as of the date of approval. However, such cancellation shall not be effective for the current marketing year for price support and marketing quota penalties purposes if: (i) The transfer approval was made in error or on the basis of incorrect information which had been unknowingly furnished by the parties to the agreement; and (ii) the parties to the transfer agreement were not notified of the cancellation before the marketing for the receiving farm exceeded the correct effective farm marketing quota. The provisions of this paragraph shall not preclude any application of the provisions with respect to erroneous notice which are set forth in § 725.70.

(2) If a transfer of an allotment and quota is canceled because of fraud on the part of the owner of the transferring farm but no fraud is attributable to either the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval of the transfer except for purposes of determining eligibility for price support and marketing quota penalties for the receiving farm. In such case, the overmarketings shall be charged against the farm from which the transfer of allotment and quota was made if the farm, after any reconstitution which may be necessary as a result of the fraud, is assigned an al-

lotment and quota against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having an allotment and quota after any reconstitution required by such fraud. Notwithstanding the foregoing, any overmarketings on the receiving farm which are in excess of the amount of quota involved in the canceled transfer shall be charged against the receiving farm.

(q) *Dissolution or revision of a transfer agreement.* A transfer agreement may be dissolved or minor revisions made with respect to such agreement if a written request by all parties to the agreement is made to the county committee by November 15 of the current crop year. After any such dissolution or revision of a transfer agreement, an official notice of the acreage allotment and marketing quota shall be issued by the county committee to each of the operators involved in the transfer agreement. If a request to dissolve or revise a multiple-year lease is made after November 15 of the current crop year, but before the last crop year for which the transfer agreement is effective, the next allotments and quotas established for the farms shall reflect the dissolution or revision.

(r) *Violation of lease provisions.* If, after a lease agreement is approved, information is brought to the attention of the county committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county committee shall schedule a hearing, notify such person of the time and place of the hearing, and afford such person an opportunity to be present and present evidence at the hearing with respect to the allegation of a false certification. If, as a result of the evidence presented, the county committee determines that such person knowingly made a false certification, the county committee shall notify the person of the determination and afford such person 15 days after mailing of the notice to request a review of the determination by a review committee as provided for by Part 711 of this chapter.

(1) *Lessor.* If it is determined that the lessor knowingly made a false certification, the next flue-cured tobacco acreage allotment and marketing quota established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured tobacco farm marketing quota established for the farm in the year of the lease.

(2) *Lessee.* If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county committee.

(s) *Considered planted credit—lessor farm.* Considered planted credit shall be given to the lessor farm for the tobacco acreage allotment which is deducted as the result of the transfer of quota from the farm by lease.

(t) *Sale of quota with installment payment option.* Nowithstanding any other provision of this section:

(1) The owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

(i) Negotiate with more than one prospective buyer before selling such allotment and quota; or

(ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or

(iii) Sell such allotment and quota for a single payment; or

(iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment: *Provided,* That such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.

(2) Flue-cured tobacco acreage allotment and marketing quota purchased in accordance with paragraph (t)(1) of this section shall not revert to the seller's farm but shall remain with the farm to which assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota: *Provided, however,* That this paragraph shall not apply if the buyer is required to forfeit such allotment and quota in accordance with § 725.74(d).

[Amdt. 4, 47 FR 56478, Dec. 17, 1982, as amended at 48 FR 40640, Sept. 8, 1983; 49 FR 33623, Aug. 24, 1984]

§ 725.73 Determining tobacco history acreages.

The tobacco history acreage shall be determined for each farm for which a tobacco farm acreage allotment has been established for the current year.

(a) *Farm acreage allotment fully preserved.* The farm acreage allotment is fully preserved as tobacco history acreage for the current year if in the current year or either of the two preceding years the sum of the planted and considered planted acreage was as much as 75 percent of the farm's history allotment (farm acreage allotment minus acreage reduced for (1) overmarketings and (2) violation of marketing quota regulations).

(b) *Computed history acreage.* If the farm acreage allotment is not fully preserved as tobacco history acreage under paragraph (a) of this section, the tobacco history acreage shall be the sum of the planted and considered planted acreage.

(c) *History acreage reduced to zero.* Notwithstanding any other provisions of this section, the history acres for the current year and for each year of the base period shall be reduced to zero if:

(1) A new farm allotment was canceled;

(2) The allotment was in a pool established in accordance with the eminent domain provisions of Part 719 of this chapter and the period of eligibility to transfer the allotment from the pool has expired; or

(3) The county committee determines that the farm has been retired from agricultural production and the allotment is not eligible for pooling in accordance with the eminent domain provisions of Part 719 of this chapter.

[Amdt. 2, 40 FR 41515, Sept. 8, 1975, as amended by Amdt. 4, 47 FR 56481, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.74 Forfeiture of allotment and quota.

(a) *Determination of allotment and quota subject to forfeiture.* (1) For purposes of paragraphs (b) and (c) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under Part 719 of this chapter if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares common ownership (commonly referred to as a "tract") if the parent farm consists of separate ownership tracts of land.

(2) For purposes of paragraphs (b) and (c) of this section, the county committee shall, in accordance with the provisions of Part 719 of this chapter, apportion the flue-cured tobacco acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

(4) The farm acreage allotment and farm marketing quota determined under this section for each farm or tract, as applicable, will be the amount of allotment and quota subject to forfeiture under this section.

(b) *Person not significantly involved in management of use of land for agricultural purposes.* For purposes of this paragraph, the term "person" means a person as defined in Part 719 of this chapter, including any: Governmental entity; public utility; educational institution; or religious institution, but not including any: Individual; partnership; joint venture; family farm corporation; trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instructional or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county ASC committee determines that any person which owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before:

(i) *Farm owned or acquired before January 1, 1983.* December 1, 1984;

(ii) *Farm acquired on or after January 1, 1983.* December 1 of the year after the year in which the farm is acquired; or

(iii) *Owner ceases to be significantly involved.* December 1 of the year after any year for which the county ASC committee determines that such person which was previously determined to be significantly involved in the management or use of land for agricultural purposes is no longer significantly involved in the management or use of land for agricultural purposes.

(2) *Significantly involved.* A person shall be considered to be significantly involved in the management or use of land for agricultural purposes if the county ASC committee determines that:

(i) For the 3 preceding years, more than 20 percent of the gross income of the person has been derived from the management or use of land for the production of crops which are planted and harvested annually, and/or livestock, including pasture and forage for livestock; and

(ii) Any other person or all other persons which in combination own more than 50 percent of the assets of the owner of the flue-cured tobacco allotment and marketing quota also meet the criteria specified in paragraph (b)(2)(i) of this section.

(3) *Documentation.* Within 30 days after a written request is made by the county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to such request, the county ASC committee shall determine that the person is not significantly involved in the management or use of land for agricultural purposes.

(c) *Flue-cured tobacco farm acreage allotment exceeds 50 percent of tillable cropland.* If any person owns a farm for which the flue-cured tobacco farm acreage allotment assigned to the land owned by the person exceeds 50 percent of the tillable cropland on such farm, the person shall take steps, such as the sale of allotment, the purchase of tillable cropland, or conversion of land to tillable cropland status, which will result in elimination of the excess or the person shall forfeit flue-cured tobacco farm acreage allotment equal to the amount of such excess that remains on or after:

(1) *Farm owned on or before December 1, 1983.* December 1, 1983: *Provided,* That if the farm is acquired after September 1, 1983 the date ay be extended by the county committee to July 1, 1984 if before December 1, 1983 the owner requests such extension in writing.

(2) *Farm acquired after December 1, 1983.* July 1 of the year after the year of acquisition.

(3) *Farm includes purchased allotment.* Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, if the flue-cured tobacco farm acreage allotment includes acreage of purchased allotment and the flue-cured tobacco farm acreage allotment exceeds 50 percent of the tillable cropland because the owner disposed of an acreage of tillable cropland after purchasing the allotment, the forfeiture shall not take place until July 1 of the year after the year of such disposal.

(4) *Increase in allotment resulting from changes in county yields or change in national acreage factor.* July 1 of the year after the crop year for which the change(s) become effective.

(5) *Owner disposes of or changes status of tillable cropland.* July 1 of the year after any year in which the farm owner disposes of an acreage of tillable cropland or changes the status

of land in the farm so as to cause such land to lose its tillable cropland status.

(d) *Buyer of allotment fails to share in risk of production*—(1) *Forfeiture required.* If any person buys a flue-cured acreage allotment and quota under the provisions of § 725.72 and such person fails to share in the risk of producing the tobacco which was planted under such allotment and quota during any of the five crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased allotment and quota which is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not subject such allotment and quota to forfeiture, but the five year period of paragraph (d)(1) of this section shall be extended one year for each year in which the allotment and quota is not utilized.

(3) *Reduction for failure to share in risk of production.* The effective allotment and quota shall be reduced, but not below zero acres or pounds, for planting, leasing, and marketing quota purposes only, to the extent of purchased allotment and quota for each crop year after the crop year in which the buyer of such allotment and quota fails to share in the risk of producing a crop of tobacco planted under such allotment and quota.

(4) *Determining forfeited amount.* If only part of the allotment and quota on a farm resulted from purchased allotment and quota, the amount of farm marketing quota which must be forfeited under paragraph (d) of this section shall be determined by:

(i) Increasing or decreasing each respective purchase of farm acreage allotment for the farm to reflect changes in county farm yields as provided in § 725.56 and changes in national acreage factors.

(ii) Adding the amounts determined in paragraph (d)(4)(i) of this section, multiplying the result by the farm yield for the farm, and subtracting the pounds of quota which have been sold to prevent forfeiture.

(e) *Tobacco not planted or considered planted in 1983 and subsequent years.* Notwithstanding any other provision of this Part, any person which, on or after January 1, 1986, owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established shall forfeit such allotment and quota after February 15 of any year immediately following the last year of the three-year period immediately preceding the year for which the county committee determines that flue-cured tobacco was not planted or considered planted on such farm during at least two years of such three-year period.

(f) *Hearing.* Before any forfeiture of allotment and quota becomes effective under the provisions of this section, the county committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county committee, as to whether:

(i) Any of the conditions requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

(4) Notify the affected person of the county committee determination and, if forfeiture of allotment and quota is to be required, afford such person an opportunity to appeal to a review committee under the provision of Part 711 of this chapter.

(5) Wait until the period has passed for the affected person to appeal the county committee or review committee determination that allotment and quota must be forfeited under the provisions of this section.

(g) *Apportionment of data and determination of allotment and quota after forfeiture*—(1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the forfeiting farm before the forfeiture to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data of the forfeiting farm:

(i) The planted and considered planted acres for the base period.

(ii) The history acres for the base period.

(iii) The farm acreage allotment for the base period.

(iv) The overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(v) The pounds of quota transferred from the forfeiting farm by lease in the current year.

(vi) The acres of allotment reduced in the current year for a marketing quota violation in a prior year.

(vii) The previous year's effective farm marketing quota.

(viii) The previous year's marketings.

(ix) The previous year's farm marketing quota.

(x) The pounds of quota transferred to the farm by lease in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the acres or pounds which are retained of the forfeiting farm from the acres or pounds established for the forfeiting farm before the forfeiture.

(2) *Forfeiture pool data.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Allotment and quota after forfeiture.* After adjustment of data, the farm acreage allotment, the effective farm acreage allotment and the effective farm marketing quota shall be determined according to §§ 725.58 and 725.60 for the forfeiting farm.

(h) *Forfeiture pool*—(1) *Forfeiture pool required.* A forfeiture pool shall be established in each county in which a forfeiture of allotment and quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation so as to reflect forfeiture or reallocated amounts of:

(i) The farm acreage allotment for the current year and for the base period.

(ii) The farm marketing quota for the current year and for the base period.

(iii) The acres reduced for violation.

(iv) The quota transferred from the forfeiting farm by lease.

(v) The planted and considered planted acres for the base period.

(vi) The history acres for base period.

(vii) The previous year's effective farm marketing quota.

(viii) The previous year's marketings.

(2) *Farm yield for forfeiture pool.* For each year, the farm yield for the forfeiture pool shall be determined by dividing the farm marketing quota in the forfeiture pool by the farm acreage allotment in the forfeiture pool. The preliminary farm yield for the forfeiture pool shall be determined by dividing the farm yield by the national yield factor.

(3) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factors used in determining yields, allotments, and quotas for old farms. Acreage and quota data in the forfeiture pool shall be decreased each time quota is reallocated from the forfeiture pool, such decrease to be made in the same proportion as the pounds of quota reallocated from the pool are to the pounds of quota in the pool before the reallocation.

(i) *Reallocation of allotment and quota from forfeiture pool*—(1) *Application.* In order to establish eligibility to receive allotment and quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before March 31: *Provided,* That the State committee may establish an earlier date if notice is given to such earlier date in time for interested applicants to file by such date.

(iii) *Where to file.* At the county ASCS office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for allotment and quota from the forfeiture pool the county committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active producer.

(iii) During the current year or during the four years preceding the current year the applicant has not:

(*a*) Sold or forfeited allotment and quota from any farm.

(*b*) Used the designation method of division to retain less allotment than the farm would have retained by another method of division.

(3) *Time to reallocate.* The county committee shall:

(i) Not reallocate any allotment and quota from the forfeiture pool until the time has passed for filing an application for forfeited allotment and quota for the current year.

(ii) Reallocate any allotment and quota from the forfeiture pool only during the 30-day period beginning on the day after the final date for filing an application for allotment and quota from the forfeiture pool.

(4) *Reallocation by county committee.* Reallocation of any allotment and quota shall be by the county committee. In making its determination of the amounts to reallocate, the county committee may consider the size of the current allotments on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants, (i.e., livestock, grain, or other commodities), previous leasing history of applicant, and other factors which in the judgment of the county committee should be considered. Allotment and quota may be reallocated to a farm which currently does not have a flue-cured tobacco allotment. A factor shall not be used to reallocate allotment and quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to reallocate.* The county committee may reallocate all or part of the quota in the forfeiture pool. The minimum and maximum amounts of quota which may be reallocated to an eligible applicant are:

(i) *Minimum.* The total amount of quota in the pool or 200 pounds, whichever is less.

(ii) *Maximum.* 1,000 pounds: *Provided,* That with State committee approval up to 2,500 pounds may be reallocated.

(7) *Data for receiving farm.* All quota data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The pounds of farm marketing quota reallocated to a farm shall be divided by the farm yield for the farm to determine the amount of reallocated farm acreage allotment. The data determined for the receiving farm in accordance with the provisions in this paragraph shall be added to any previous data for the receiving farm.

(8) *Allotment and quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for the receiving farm in accordance with §§ 725.58 and 725.60.

(j) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated to a farm under the provisions of this section shall be forfeited if the applicant to whom the allotment and quota is reallocated fails to share in the risk of production of tobacco produced under such allotment and quota during any of the five years beginning with the crop year during which the allotment and quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner as is provided in paragraph (d)(4) of this section for forfeiture of purchased quota. Forfeiture shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco produced under such allotment and quota: *Provided,* That while the failure to utilize such allotment and quota shall not subject such allotment and quota to forfeiture, the five year period, as provided for in this paragraph, shall be extended by a year for each year in which the allotment and quota is not utilized.

(k) *Successor-in-interest.* The successor-in-interest shall be subject to the provisions in this section in the same manner and to the same extent as would be applicable to the person whose interest was assumed.

(1) *New owner of farm.* The new owner of a farm on which a portion or all of the farm acreage allotment and farm marketing quota for such farm was either purchased and/or was reallocated from forfeited allotment and quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 15 of the current crop year and such owner would otherwise be required to sell or forfeit the farm acreage allotment and farm marketing quota because in the preceding crop year the owner of such allotment and quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated allotment and quota, the new owner may be considered the buyer of the allotment and quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county committee on or before June 15 of the current year a certification that such owner intends to become an active flue-cured tobacco producer. Any purchased or reallocated allotment and quota which is acquired by a new owner who is considered to be the buyer of allotment and quota in accordance with the provisions of this paragraph shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the allotment and quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of allotment and quota which was transferred to a farm which was not owned by such buyer if the buyer ceases to share in the risk of production of tobacco produced on the farm.

[Amdt. 4, 47 FR 56481, Dec. 17, 1982, as amended at 48 FR 40640, Sept. 8, 1983; 49 FR 33624, Aug. 24, 1984]

§ 725.75 Transfer of tobacco farm acreage allotment for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco acreage allotment for any farm in the county. The county committee of each county affected by the determination shall publicize the determination.

(b) *Application of transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage within the farm tobacco allotment for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such acreage cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county committee for the nearby county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the smaller of (1) the farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or (2) the acreage requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that:

(1) All or part of the farm allotment for the transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old tobacco farm.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments to have been planted to tobacco on the farm from which such allotment is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county committee may accept applications filed after the closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

[38 FR 27356, Oct. 3, 1973, as amended at 40 FR 41515, Sept. 8, 1975]

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

§ 725.85 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco which is determined by a representative of the State committee or county committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind until it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR Part 29), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Effective with respect to the 1982 and subsequent crops of tobacco, any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of quota tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1949.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (type 61) tobacco when it is nonquota tobacco and produced in Connecticut or Massachusetts, and to cigar-wrapper (type 62) tobacco when it is nonquota tobacco and produced in Georgia or Florida; and

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards

issued by the Secretary for the inspection and identification of tobacco. Such inspection and identification shall be made prior to removal of the tobacco from the State where it was produced.

(Secs. 301, 313, 314, 320, 317, 372, 375, 52 Stat. 38, as amended, 88 Stat. 1089, as amended, (7 U.S.C. 1301, 1313, 1314, 1314(c), 1314(f), 1372, 1375))

[47 FR 10773, Mar. 12, 1982, as amended by Amdt. 2, 47 FR 28912, July 2, 1982]

§ 725.86 Lien for penalty.

(a) *Lien on tobacco.* Until the amount of any penalty which is imposed in accordance with section 314 of the Act (7 U.S.C. 1314) is paid, a lien on the tobacco with respect to which such penalty is incurred, and on any other tobacco which is marketed in the same or a subsequent marketing year which is subject to marketing quotas in which the person liable for payment of the penalty has an interest, shall exist in favor of the United States for the amount of the penalty.

(b) *Lien precedence.* The lien on any other tobacco attaches at the time the debt is entered on a debt record in:

(1) *Indebted producers.* The county ASCS office for the county in which a subsequent crop of tobacco is grown.

(2) *Indebted warehouseman.* The State ASCS office for the State in which the warehouse is located.

(3) *Indebted dealer.* The State ASCS Office for the State to which the dealer is required to file reports.

(c) *List of tobacco marketing penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record for the respective office. The list shall be available for examination upon written request by any interested person.

(d) *"No Price Support."* The notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* Any producer on the farm if the producers on the farm are ineligible for price support under the provisions of Part 1464 of this title.

(2) *Producer.* A producer on a farm if the producer is ineligible for price support under the provisions of Part 1464 of this title.

[Amdt. 4, 47 FR 56483, Dec. 17, 1982 and 48 FR 40640, Sept. 8, 1983]

§ 725.87 Issuance of marketing cards.

(a) *General.* (1) A marketing card (MQ-76) shall be issued for the current marketing year for each farm having tobacco available for marketing. Cards shall be issued in the name of the farm operator except that (i) cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station, and (ii) cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer who is not the farm operator if the county committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop.

(2) If the county committee has reason to believe that one or more producers on the farm have been or likely will be deprived of the right to use such marketing card to market his or their proportionate share of the crop, a hearing shall be scheduled by the county committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county committee. If the farm operator or other producer(s) on the farm do not attend the hearing, or are not represented, the county committee may take whatever action it deems proper on the basis of information available to it. If the county committee finds that any

producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 110 percent of the producer's proportionate share of effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market his proportionate share of the crop and another marketing card (or other cards if considered preferable by the county committee) shall be issued showing 110 percent of the balance of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer on the farm during the current crop year.

(b) *Person authorized to issue marketing cards.* The county executive director shall be responsible for the issuance of marketing cards.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

(2) Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *"No Price Support."* The notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* Any producer on the farm if the producers on the farm are ineligible for price support under the provisions of Part 1464 of this title.

(2) *Producer.* A producer on a farm if the producer is ineligible for price support under the provisions of Part 1464 of this title.

(e) *Cards for tobacco grown by publicly owned experiment stations.* A marketing card shall be issued to identify tobacco grown for experimental purposes by or for publicly owned experiment stations.

(f) *Farm quota data entered on marketing card and supplemental card.* (1) Any marketing card issued to market tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 110 percent times the effective farm marketing quota: *Provided,* That, if the tobacco available for marketing from the farm is determined by the county committee or the county executive director to be less than the effective farm marketing quota the pounds determined to be available for marketing shall for purposes of issuing a marketing card and showing thereon the farm's 110 percent of quota data, be considered the effective farm marketing quota for the farm: *Provided further,* That if any producer on the farm shows to the satisfaction of the county committee or county executive director that there are available for marketing from the farm pounds of tobacco above the pounds considered as the effective farm marketing quota under the provisions above, the data shown on the marketing card shall be increased accordingly but not to exceed the pounds which were or would have been computed under paragraph (f)(1) of this section.

(2) Where the farm operator requests, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The pounds computed as the balance of 110 percent of quota from prior marketing card shall be shown in the first space on the reverse side of the marketing card.

(3) Two or more marketing cards may be issued for a farm if the farm operator so requests in writing and specifies in writing the number of

pounds to be assigned to each card. In such case, each marketing card shall shown the assigned quota plus 10 percent of such assigned quota in the space "110 percent of quota."

(4) If, when authorized under Part 1421 of this title, a producer requests and obtains from the county committee an interim advance of CCC funds on part or all of his flue-cured tobacco crop prior to marketing thereof, the estimated quantity of tobacco upon which the interim advance was made shall be entered in parentheses on the reverse side of the marketing card in the space for recording sales. Any poundage balance of the "110 percent of quota" data shall be entered below the estimated pounds upon which an interim advance was made.

(g) *Marketing cards for producers of registered or certified flue-cured tobacco seed.* Producers of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage to seed production without such tobacco affecting the farm's eligibility for price support if an agreement is signed by the farm operator, and the producer if different from the operator, which provides:

(1) For the destruction prior to harvest of all tobacco produced on the acreage designated for seed production.

(2) That the producers shall pay the cost of compliance visits to a farm by representatives of the county committee for the purposes of (i) designating and determining the acreage for seed production and (ii) determining that no tobacco has been harvested from the acreage designated for seed production and to witness destruction of the tobacco leaves.

(3) That the producer(s) signing the agreement shall agree to timely notify the county office when the tobacco seed have been harvested.

(4) That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(5) That if the county committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect that the tobacco produced on the farm is not eligible for price support.

(h) *Other data entered on marketing cards and supplemental card.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 1, 39 FR 30822, Aug. 26, 1974; Amdt. 2, 40 FR 41515, Sept. 8, 1975; 42 FR 27566, May 31, 1977; Amdt. 4, 47 FR 56484, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.88 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that subject to prior liens, the net proceeds from any tobacco placed under price support loan shall be paid to the "Agricultural Stabilization and Conservation Service, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtedness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance. If requested by the producer, the county executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county executive director, two or more marketing cards may be issued for any farm. Upon the return to the county office of a marketing card which has been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 4, 47 FR 56484, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.89 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or become illegible.

(4) Any erasure or alteration has been made and not properly initialed by the county executive director or a marketing recorder.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county executive director who issued the card or by a marketing recorder), the farm operator, or the person having the card in his possession, shall return it to the county office at which it was issued.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 2, 40 FR 41515, Sept. 8, 1975]

§ 725.90 Misuse of marketing card.

Any information which causes a marketing recorder, a member of a State, county, or community committee, or an employee of the State or county office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm, shall be reported immediately by such person to the county or State office.

§ 725.91 Identification of marketings.

(a) *Identification of producer marketings.* Each auction and non-auction marketing of tobacco (except for Georgia Florida cigar wrapper) from a farm in a quota area in the current year shall be identified by a marketing card, Form MQ-76, issued for the farm unless prior to marketing an AMS certification shows it to be nonquota tobacco. The reverse side of the marketing card shall show in pounds:

(1) 110 percent of quota, (2) balance of 110 percent of quota after each sale, and (3) date of each sale. Each producer sale at auction shall be recorded on a Form MQ-72-1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on Form MQ-72-2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ-72-2 and shall enter the data on MQ-76. For producer sales at auction, Form MQ-72-1 and Form MQ-76 shall be executed only by the ASCS marketing recorder.

(b) *Verification of penalty by warehousemen or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouseman or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouseman or dealer shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(c) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouseman on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(d) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ-79-2, issued to the dealer.

(e) *Separate display on auction warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco except where the tobacco is represented to be a nonquota kind the basket ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(3) Make and keep records that will insure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(f) *Cross-reference of tobacco sale bill number to prior tobacco sale bill covering tobacco identified by the same marketing card to be sold the same day.* Each warehouseman shall for each lot of tobacco weighed in on his floor for sale the same day cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouseman in the "Remarks" space on the tobacco sale bill, on all copies, at the time he weighs in the tobacco at the warehouse.

(g) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouseman, it shall be identified as leaf account resale tobacco.

§ 725.92 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the FEDERAL REGISTER.

[49 FR 29563, July 23, 1984]

§ 725.93 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer through an auction sale shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 725.94 Penalties considered to be due from warehousemen, dealers, buyers, and others excluding the producer.

Any marketing of tobacco under one of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without marketing card.* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouseman unless prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Nonauction sale.* Any nonauction marketing of tobacco which:

(1) Is not identified by a valid marketing card and recorded at the time of marketing on MQ-79, Dealer's Report, the marketing card, and MQ-72-2, Report of Tobacco Nonauction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2, Report of Tobacco Nonauction Purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(c) *Leaf account tobacco.* If resales are in excess of prior leaf account purchases, such marketing shall be considered to be a marketing of excess tobacco unless such warehousemen furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco.

(d) *Dealer's tobacco.* The flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ-79), which are in excess of his total prior flue-cured tobacco purchases (as shown or due to be shown on Form MQ-79) shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. Penalty due which is not withheld by a warehouseman shall be remitted weekly by the dealer to the State office with his reports on Form MQ-79.

(e) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouseman or dealer, but which is not so reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State executive director. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Marketings falsely identified by a person other than the producer of the tobacco.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The marketing quota penalty shall be paid by the person who marketed the tobacco.

(g) *Carryover tobacco.* Any tobacco on hand and reported or due to be reported under § 725.99(g)(16) for warehousemen and § 725.100(c)(4) for dealers shall be included as a resale in determining whether an account has excess resales. Unless the warehouseman furnishes proof acceptable to the State committee and unless the dealer furnishes proof acceptable to the State executive director, showing that such account does not represent excess tobacco, penalty at the full rate shall be paid thereon by such warehouseman or dealer.

(h) *Floor sweepings.* Effective for the 1982 and subsequent crops of tobacco, any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price, as specified in § 725.92, for the immediately preceding marketing year. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 15 days after the warehouse closes for the auction season shall be considered as marketed. The floor sweepings on hand shall be weighed by the warehouseman and the weight shall be certified by the warehouseman, such weighing to be done in the presence of a representative of either the county committee or the State committee. Floor sweepings which are destroyed in the presence of a representative of the county committee within 15 days after the warehouse closes for the season shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county committee determines, after the warehouse has been closed for the auction season for more than 15 days, that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of Part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity to a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Agricultural Stabilization and Conservation Service, USDA" within 15 days after the date of mailing of the notice.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 2, 40 FR 41515, Sept. 8, 1975; Amdt. 7, 43 FR 2, Jan. 3, 1978; Amdt. 4, 47 FR 56484, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.95 Producers penalties; false identifications; failure to account; canceled allotments; overmarketing proportionate share.

(a) *Penalties for marketing over 110 percent of farm quota.* Penalty at the full rate shall be due on any marketings which exceed 110 percent of the effective farm marketing quota.

(b) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, a penalty at the full rate shall be assessed based on the larger of:

(i) The actual marketings above 110 percent of the effective farm marketing quota; or

(ii) The sum of pounds equal to 25 percent of the effective farm marketing quota plus the pounds determined by mutiplying the farm yield times the acres harvested in excess of the effective farm acreage allotment: *Provided, however,* That if such amount exceeds the amount determined in accordance with paragraph (b)(1)(i) of this section, the penalty assessed may be based on the amount determined in accordance with paragraph (b)(1)(i) of this section if the county committee determines, with concurrence of the State committee, that the penalty assessed on the amount determined in accordance with paragraph (b)(1)(ii) of this section would be unduly harsh in relation to the quantity of tobacco which is falsely identified or which is not accounted for and the tobacco program would not be adversely affected.

(c) *Cancelled allotment.* If part or all of the tobacco produced on a farm has been marketed and the allotment for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota.* If the county committee determines that the farm operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing his proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound marketed above 110 percent of his proportionate share of the effective farm marketing quota:

Provided, That the sum of such penalties shall not exceed the total penalty due on total marketings above 110 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph (d), a hearing shall be scheduled by the county committee and the operator and affected producers shall be invited to be present, or to be repre-

ented, to determine whether the op-
rator or another producer on the
arm has marketed more than 110 per-
ent of his proportionate share of the
ffective farm marketing quota. The
otice of the hearing shall request the
arm operator and affected producers
o bring to the hearing floor sheets
nd other relevant supporting docu-
nents. At least two members of the
ounty committee shall be present at
he hearing. The hearing shall be held
t the time and place named in the
otice and any action taken to impose
enalty shall be taken after the hear-
ng. If the farm operator or other af-
ected producer does not attend the
earing, or is not represented, the
ounty committee may take whatever
ction it deems necessary to assess
enalty against the proper producers.
f a hearing under § 725.87(a) is being
eld, and it is practicable to do so,
uch hearing and the hearing under
his paragraph may be combined.

(e) *Penalties not to be assessed.*
Vhere the operator or another pro-
ucer on the farm markets a quantity
f tobacco above 110 percent of the ef-
ective marketing quota for the farm
nd such overage is found to have
een caused by the failure to record or
mproper recording of tobacco pound-
ge data on the marketing card, that
mount of the penalty as was due to
uch failure to record or improper re-
ording will not be required to be paid
y the farm operator or other produc-
r on the farm if:

(1) For amounts of $10 or less, the
ounty committee, and (2) for
mounts above $10, the county com-
nittee, with the approval of the State
ommittee, determines that each of
he following conditions is applicable:

(i) The failure to record or incorrect
ecording resulted from action or inac-
ion of a marketing recorder or an-
ther ASCS employee, and (ii) the
arm operator or another producer on
he farm had no knowledge of such
ailure or error. Overmarketings for a
arm for which the marketing penalty
vill not be paid pursuant to the provi-
ions of this paragraph (d) shall be de-
ermined based upon the correct effec-
ive farm marketing quota and correct
ctual marketings of tobacco from the
arm.

(f) *Ineligible for price support.* Effective for the 1983 and subsequent crops, a penalty at the basic rate as specified in § 725.92 for the current marketing year shall be assessed on any marketings of flue-cured tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agreed to make contribution to the No Net Cost Fund as provided in Part 1464 of this title.

[38 FR 27356, Oct. 3, 1973, as amended at 42 FR 27567, May 31, 1977; Amdt. 7, 43 FR 2, Jan. 3, 1978; Amdt. 4, 47 FR 56484, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983; 49 FR 33625, Aug. 24, 1984]

§ 725.96 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition of tobacco, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the ASCS State office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale—net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producer, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sale.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§ 725.97 Request for return of penalty.

Any producer of tobacco and any other person who bore the burden of the payment of any penalty after the marketing of all tobacco available for marketing from the farm may request the return of the amount of such penalty which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the county office within 2 years after the payment of the penalty. Approval of return of penalty to producers shall be by the county committee, subject to the approval of the State executive director.

RECORDS AND REPORTS

§ 725.98 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* If any producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to (1) the acreage of tobacco grown on the farm or (2) the amount of tobacco produced on or marketed from the farm, the tobacco allotment, next established for any such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the failure to file, filing of, or aiding or acquiescing in the filing of such report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false: *Provided,* That the failure to file or the filing of or aiding or acquiescing in the filing of the report will be construed as intentional unless a correct report is filed and any penalty is paid in full, or (ii) no person connected with the farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false report or failure to file a report. If a farm operator files a certification of tobacco acreage on the farm and, after a farm visit and measurement of the acreage, it is determined by the county committee (with approval of the State committee) that the certification was false (either under certification or over certification) in what amounts to a scheme or device to defeat the purpose of the program, the allotment next established for the farm shall be reduced. If the condition in paragraphs (a)(2) (i) and (ii) of this section are not applicable, the next established allotment shall be reduced by the pounds computed as follows: The acreage falsely certified (difference between certified and measured acreage) shall, for the year of the violation, be multiplied by the farm yield. Such method of determining the amount of allotment reduction also is provided for in paragraph (g) of this section.

(b) *Report of tobacco grown for experimental purposes.* For farms on which tobacco is being grown for experimental purposes only, the director of a publicly owned agricultural experiment station shall furnish the State ASCS office, prior to the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, a report for each current year showing the following information:

(1) Name and address of the publicly owned agricultural experiment station.

(2) Name of the owner, and name of the operator if different from the owner, of each farm on which tobacco is grown for experimental purposes only.

(3) The amount of acreage of tobacco grown on each farm for experimental purposes only.

(4) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only, the tobacco was grown under his direction, and the acreage of each plot was considered necessary for carrying out the experiment.

(c) *Harvesting second crop tobacco from the same acreage.* If, in the same calendar year more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(d) *False identification.* Where false identification (see § 725.51(l)) occurs as to any tobacco, the acreage allotments next established for the farm or farms and kind of tobacco involved shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing: *Provided,* That the marketing shall be construed as intentional, unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided or acquiesced in such marketing.

The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are very small when compared to the effective quota, and no adverse effect on the operations of the tobacco program in the area would result.

(e) *Report on marketing card.* The operator of each farm on which tobacco is produced shall return to the ASCS county office each marketing card issued for the farm whenever marketings from the farm are completed, and, in no event, later than 20 days, in the year of issuance of the card, after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county committee. Upon failure to satisfactorily account to the county committee for disposition of flue-cured tobacco marketed from the farm the allotment next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county committee and a representative of the State committee, that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided,* That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made; or (2) no person connected with such farm for the year for which the allotment is being established, caused, aided, or acquiesced in the failure to furnish such proof.

(f) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator or any producer on a farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request by certified mail from the State or county committee, furnish on MQ-108, Report of Production and Disposition, a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the State or county committee within 15 days after the request was mailed showing as to the farm at the time of filing such report:

(1) The total harvested acres, (2) the total amount of tobacco on hand and its location, (3) the total pounds of tobacco produced, (4) the name and address of the warehouseman, dealer, or other person to or through whom tobacco was marketed, and the number of pounds marketed, the gross price paid and the date of the marketings, and (5) the complete details as to any tobacco disposed of other than by sale.

The operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request from the county committee, furnish on Form MQ-108-1, Report of Unmarketed Tobacco, a written report of the amount and location of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county committee within 15 days after the request was mailed to such person at his last known address. Failure to file the MQ-108 or MQ-108-1 as requested, the filing of an MQ-108 or MQ-108-1 which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition:

Provided, That (i) such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

(g) *Amount of allotment reduction.* The amount of reduction in the allotment for the current year for violations described in paragraph (a), (d), (e), or (f) of this section shall be that percentage (but not to exceed 100 percent) which the amount of tobacco involved in the violations is of the respective farm marketing quota for the farm for the year in which the violations occurred times the current year farm acreage allotment. The quantity of tobacco in violation shall be determined by the county committee. If known, the actual quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity is not known, determine the quantity by taking into consideration the condition of the crop during production, if known, and such other information as is available.

(h) *Allotment reductions for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required.

(i) *Allotment reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced. Allotment reductions are applicable, except under paragraph (c) of this section, unless the violating producer has no interest in the current tobacco crop.

(j) *Quota reduction.* If an acreage allotment reduction is made under this section, the farm marketing quota shall be reduced to reflect such reduction in an amount determined by multiplying the acreage reduction by the farm yield.

(k) *Unauthorized erasure on marketing card.* Any unauthorized erasure or alteration of any information or data on a marketing card may be considered a violation of the U.S. Criminal Statutes.

(l) *County administrative hearings in connection with violations.* Except for the failure to return a marketing card, the allotment for any farm shall not be reduced for a violation under this section until the operator of the farm has been afforded an opportunity to discuss the nature and extent of the violation with the county committee. If after having been afforded an opportunity to discuss a violation with the county committee the farm operator fails or refuses to discuss the violation, the county committee shall take action as required by these regulations.

(m) *Sequence of allotment reduction where the farm allotment is to be reduced because of a violation and overmarketings.* If the tobacco allotment for a farm is to be reduced in the current year because of both (1) a violation and (2) overmarketings in a prior year, the reduction in the allotment for the violation shall be made before making the reduction for overmarketings.

(n) *Correction of farm records.* If the farm marketing records for a farm are determined to be incorrect, the records shall be corrected.

(o) *Report on Form MQ-92, Estimate of Production.* In order to provide a basis for a determination under the first proviso in § 725.87(f)(1) and as an aid to discouraging, thwarting, and discovering violations by producers and to enforcing the provisions of the flue-cured tobacco marketing quota program, an estimate of production, Form MQ-92, shall be obtained in accordance with instructions issued by the Deputy Administrator.

(p) *Effect of false identification on establishing future farm marketing quotas.* Notwithstanding any other provision of this section, if a producer falsely identifies tobacco as having been produced on or marketed from a farm, the quantity of the tobacco which is falsely identified shall be considered, for the purpose of establishing future farm marketing quotas, as having been produced on both the farm for which it was identified as having been produced and the farm of actual production, if known, or, as the case may be, such quantity of tobacco shall be considered as actually marketed from the farm.

(Approved by the Office of Management and Budget under control number 0560-0001)

(44 U.S.C. 3506)

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 2, 40 FR 41515, Sept. 8, 1975; 42 FR 27567, May 31, 1977; 42 FR 40882, Aug. 12, 1977; Amdt. 7, 43 FR 2, Jan. 3, 1978; Amdt. 11, 44 FR 15990, Mar. 16, 1979; 47 FR 745, Jan. 7, 1982; Amdt. 4, 47 FR 56484, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983; 49 FR 33625, Aug. 24, 1984]

§ 725.99 Warehouseman's records and reports.

Each warehouse shall keep the records and make the reports separately for each kind of tobacco (quota and nonquota) as provided in this section.

(a) *Record of marketing*—(1) *Auction sale.* Each warehouseman shall keep such records as will enable him to furnish the State office with respect to each auction sale of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller, in the case of a sale by a producer, and in the case of a resale, the name of the seller.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer; and, in addition, with respect to each individual basket or lot of tobacco constituting the auction sale, the following information:

(*a*) Name of purchaser.

(*b*) Number of pounds sold.

(*c*) Gross sale price.

(2) *Separate account records.* Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonauction sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco. The resale record shall include separate data for leaf account tobacco and floor sweeping tobacco.

(3) *Buyers corrections account.* Each warehouseman shall keep such records including negative adjustment invoices as will enable him to furnish a weekly report on Form MQ-71 to the State ASCS office showing the total pounds of the debits (for returned baskets, short baskets, and short weights of tobacco) and the credits (for long baskets, and long weights of tobacco) to the buyers corrections account. Where the warehouseman returns to the seller tobacco debited to the buyers corrections account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the buyers corrections account and a corresponding purchase (debit entry) in the case of a dealer on his MQ-79, Dealer's Report. Any balancing figure reflected on the warehouseman's summary of bill-outs shall not be included in the buyers corrections account.

(4) *Tobacco sale bill and Daily Warehouse Sales Summary.* Each ware-

houseman shall use tobacco sales bills furnished at his expense showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) Registration number assigned the warehouse by the Department;

(iii) Name and address of warehouse where sale is held;

(iv) Identification of other producers having an interest in the tobacco;

(v) [Reserved]

(vi) Date of sale;

(vii) Number of pounds in each basket or sheet;

(viii) Name and address of seller and (*a*) farm number (including State and county codes) for producer tobacco, and (*b*) dealer registration number for resale tobacco;

(ix) Identification number, if available, for each basket or sheet of tobacco to be offered for sale;

(x) Poundage balance before sale based on 110 percent of farm quota;

(xi) Name or symbol of purchaser of each basket or sheet which is sold;

(xii) Gross number of pounds sold;

(xiii) Sales price for each basket or sheet and gross sale price for all baskets or sheets sold;

(xiv) Nonauction purchases by the warehouse holding the sale;

(xv) Tobacco grade for tobacco consigned to price support;

(xvi) Marketing quota penalty collected; and

(xvii) Copies of the suggested format may be obtained from the Director. The warehouseman shall not weigh in any tobacco for sale unless a marketing card (MQ-76 for producers, MQ-79-2 for dealers) is furnished the weighman or the tobacco is represented to be a nonquota kind which is required to be displayed in a separate area on the warehouse floor under § 725.91(e) of these regulations. The buyer and grade space on the tobacco sale bill shall show nonauction purchases by the warehouse, tobacco grade for tobacco consigned to price support, and the symbol for tobacco bought by private buyers. At the end of each sale day, the tobacco sale bills shall be sorted and filed in numerical order by sale dates, and basket tickets shall be filed in an orderly manner by sale dates or by numerical order. A copy of the executed Form MQ-80, Daily Warehouse Sales Summary shall be furnished to marketing recorder for the Kansas City Management Office (KCMO).

(5) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(6) *Report of farm scrap resulting from furnishing curing or stripping space for tobacco from farmers.* Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(7) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show resale and:

(i) For dealers, the name of the dealer making each resale; and (ii) for the warehouse, the name of the warehouse and either "floor sweepings" or "leaf account" tobacco.

(8) *Nonquota tobacco or quota tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or should there be a question as to what kind of quota tobacco is being offered, an inspection shall be obtained from the Agricultural Marketing Service of this Department (AMS) after the tobacco is weighed and in line for sale. The basket ticket for the tobacco shall be cross-referenced to the sale bill by sale bill number and date. The sale bill shall show the producers name and address and the State and county code and farm number on which the tobacco was produced. If an AMS inspection shows that a basket of lot of tobacco is of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the basket ticket and

sale bill shall be furnished to the State office at the end of the sale day.

(b) *Identification of producer sales of tobacco—tobacco sale bill.* The State and county codes and the farm serial number on the marketing card identifying the tobacco to be marketed at auction shall be recorded by the warehouseman on the tobacco sale bill at the time the tobacco is weighed in and the warehouseman shall retain the marketing card where tobacco is to be sold at auction only until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer. In any case where a producer's marketing card is found in the possession of a warehouseman and no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for such card will be picked up by an ASCS representative for return to the producer. The warehouseman shall be responsible for the safekeeping and proper use of the marketing card during his retention of it. Each tobacco sale bill issued to cover an auction sale of tobacco from a farm for which a marketing card is issued bearing the notation "No Price Support" shall bear the same notation. A separate tobacco sale bill shall be executed to cover any tobacco which represents more than 110 percent of the effective farm marketing quota and the notation, "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale. The letters, "NA" shall be shown on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and there shall be recorded on all such tobacco sale bills the farm serial number on the marketing card identifying the tobacco marketed at the time the tobacco is purchased at nonauction sale. A copy of the tobacco sale bill bearing the letters, "NA" shall be furnished the producer for any lot or basket of such tobacco purchased by the warehouseman.

(c) *Marketing card.* Each marketing of tobacco from a farm in the flue-cured tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

The card shall be executed as follows:

(1) *Auction sale.* A marketing card used to cover an auction sale shall show on the reverse side the poundage balance of the "110 percent of quota". At the time of weigh-in the tobacco sale bill shall show the poundage balance of 110 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of the penalty.

(2) *Nonauction sale to a warehouseman at the warehouse.* A marketing card used to cover a nonauction sale of tobacco to a warehouseman shall show on the reverse side the poundage balance of the "110 percent of quota." If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "110 percent of quota". The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(3) *Nonauction sale (country purchase) to a warehouseman.* A marketing card used to cover a nonauction sale (country purchase) at the farm shall show on the reverse side the poundage balance of the "110 percent of quota". Each warehouseman shall record each nonauction purchase of tobacco made by him on MQ-79 and on Form MQ-72-2, Report of Tobacco Nonauction Purchase. The data to be reported on Form MQ-72-2 is set forth in § 725.100(c) (3).

(4) *Tobacco under interim advance.* If tobacco is marketed from a farm, part or all of which is tobacco upon which an interim advance was made pursuant to Part 1421 of this chapter, the tobacco sale bill and the marketing card issued for the farm shall show in parentheses the poundage balance of the tobacco upon which an interim advance was made, and the poundage balance of any other tobacco. As the interim advance is repaid on any tobacco the quantity shown on the mar-

keting card as that upon which an advance was made shall be reduced proportionately.

(d) *Suspended sale record.* (1) Any tobacco sale bill covering sale of tobacco for which a valid marketing card or dealer identification card was not presented shall be given to a marketing recorder who shall stamp such bills, "Suspended."

(2) When cleared, such suspended sale shall show "suspended—cleared" and date cleared. Such tobacco sale data shall be submitted to KCMO after the sale is cleared. If a suspended sale is not cleared from suspension by the last auction sale day for the warehouse for the season, it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouseman.

(e) *Warehouseman's entries on other dealer's report.* Each warehouseman shall record, or have the dealer record, on MQ-79, the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. If any tobacco resold by the dealer is tobacco bought by him and carried over by him from a crop produced prior to the current crop, the entry on MQ-79 shall clearly show such fact.

(f) *Record and report of warehouseman's leaf account purchases and resales not on his floor.* Each warehouseman shall keep a record and make reports on MQ-79, Dealer's Report, showing:

(1) All nonauction purchases of tobacco, except nonauction purchases at his warehouse which are reported on MQ-80.

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

Form MQ-79 shall be prepared and a copy, including copies of Form MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week (at the end of each sale day during the auction season for such warehouse) in which such tobacco was purchased or resold: *Provided,* That, if tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ-79 and Form MQ-72-2 to be due shall be forwarded to the State ASCS office with the original copy of MQ-79.

(g) *Daily warehouse sales summary.* Each warehouseman shall prepare at the end of each sale day a report on MQ-80, Daily Warehouse Sales Summary, showing for each sale day:

(1) For each manufacturer, buyer, order buyer and Flue-Cured Tobacco Cooperative Stabilization Corporation (stabilization), pounds of tobacco purchases at auction (consigned in the case of stabilization).

(2) The sum of the items for paragraph (g)(1) of this section.

(3) Resales at auction for each person listed under paragraph (g)(1) of this section.

(4) For each dealer subject to reporting purchases and resales on MQ-79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(5) The total pounds purchased at auction for the leaf account.

(6) The total pounds purchased at nonauction at the warehouse for the leaf account.

(7) The sum of the total pounds for paragraphs (g) (5) and (6) of this section.

(8)(i) The total leaf account resales and (ii) a separate account for total floor sweeping resales.

(9) The sum of the total purchases for paragraphs (g) (2), (4) and (7) of this section.

(10) The sum of the total resales for paragraphs (g) (3), (4), and (8) of this section.

(11) The totals of the purchases column on the MQ-79 representing the nonauction purchases for the warehouse leaf account.

(12) The totals of the resales column on Form MQ-79 representing the nonauction resales (including floor sweep-

ings nonauction sales) by the warehouse.

(13) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ-72-1.

(14) For each dealer, at time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(15) As to the information required to be entered on MQ-80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) The total number of Forms MQ-72-1 for the sale day and the sum of pounds sold and shown on Forms MQ-72-1, and (ii) the total number of suspended sale bills and the sum of such pounds sold.

(16) At the end of the season, each warehouseman shall: (i) Report on his final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, (ii) permit its inspection by a representative of ASCS, and (iii) provide for the weighing of such tobacco (to be witnessed by ASCS) and furnished to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained as provided in paragraph (g)(16)(iii) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(17) Before the next marketing season begins, carryover tobacco reported by the warehouseman as provided in paragraphs (g)(16) (i), (ii), and (iii) of this section shall be reinspected by a representative of ASCS. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the warehouseman shall provide for the weighing of such tobacco which shall be witnessed by ASCS. The warehouseman shall furnish to ASCS at the time of weighing a certification as to the actual weight of the tobacco. If ASCS determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial certification, the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (g)(16) of this section shall be used for the purpose of determining the amount of penalty, if penalty is due. Penalty will be assessed after the initial certification and reconciliation when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be creditited to the account as carryover tobacco.

(h) *Report to county office of long weights and long baskets.* Each warehouseman shall report to the county ASCS office or marketing recorder long weights and long baskets of producer tobacco (first sales) for which the farmer has been paid.

(i) *Report on Form MQ-78, Tobacco Warehouse Organization.* Each warehouseman shall annually, prior to opening of auction markets, furnish ASCS an executed Form MQ-78 showing:

(1) Form of business organization.

(2) Names and addresses of warehouse officials and bookkeeper.

(3) Names and addresses of other warehouses in which the officials and bookkeeper have a financial interest.

(4) Name and address of custodian of warehouse records, including their location.

(j) *Payee to be shown an auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example "John Doe or Bearer."

(k) *Basket ticket and bill-out invoice.* At the time tobacco is weighed for marketing, the warehouseman shall record the weight of the basket or sheet of tobacco on the tobacco sale bill and on the basket ticket. The sale bill number on which the basket or sheet of tobacco is recorded shall be recorded on the basket ticket. If the marketing card which is presented to identify the tobacco at weigh-in bears the notation "No Price Support", the same notation shall be entered by the warehouseman on the basket ticket for each basket or sheet of tobacco which is identified with the same marketing card. When the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number (warehouse code), sale bill number, and line number on which the basket or sheet of tobacco was recorded on the sale bill.

(l) *Handling rejected (Producer) sale after bill-out.* Where a producer rejects the sale of a basket of tobacco, and the tobacco has been billed out and bills presented to the buyer, the warehouseman shall not change the (i) MQ-76 or (ii) MQ-80 reporting the sale. If the warehouseman gains possession of the tobacco, and it is resold by such warehouseman, it shall be identified as resale tobacco.

(m) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.* For each marketing year, the warehouseman shall maintain copies of the bill-out invoice to the purchaser by grades showing the pounds purchased. In lieu of this requirement, the warehouseman may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) baskets from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchaser.

(n) *Reporting of processed leaf account or floor sweepings tobacco.* Any warehouseman who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall be the end of the week in which such tobacco was delivered report to the State office on MQ-79, Dealer's Report:

(1) The date delivered; (2) name and address of the firm to which the tobacco was delivered and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

[38 FR 27356, Oct. 3, 1973; 38 FR 29876, Oct. 30, 1973, as amended by 42 FR 27567, May 31, 1977; Amdt. 15, 45 FR 56006, Aug. 22, 1980; Amdt. 4, 47 FR 56484, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.100 Dealer's records and reports.

Each dealer, except as provided in § 725.102, shall keep the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided by this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number and the reporting dealer's identification number as well as the names of the warehouse and dealers involved in the transaction.

(a) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:

(*a*) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or

(*b*) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer of the tobacco, if different from the operator; or

(*c*) The seller if purchased as a nonauction purchase from a warehouseman or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address, FC number if known, and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.

(v) The pounds of tobacco purchased.

(vi) The gross purchase price.

(vii) The amount of penalty.

(viii) The amount deducted for the "No Net Cost Tobacco Fund".

(ix) The quantity of tobacco purchased from a prior crop and carried over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of:

(*a*) The warehouse through which the tobacco was sold, if sold at a warehouse auction, or

(*b*) The buyer if the tobacco was sold as a nonauction sale.

(ii) The date of sale.

(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(b) *Nonauction purchase.* Each purchase of tobacco from a flue-cured tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless an AMS inspection certificate is obtained prior to purchase which shows that the tobacco being offered for sale is a kind of tobacco which is not subject to marketing quotas.

(1) After each nonauction purchase, the dealer shall enter a declining balance of "110 percent of quota" on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous "110 percent of quota" entry on the marketing card by the number of pounds of tobacco purchased. The date the tobacco was purchased also shall be entered on the marketing card at the time each lot of tobacco is purchased.

(2) After each nonauction purchase, the dealer shall prepare a Form MQ-72-2 which shall set forth the following:

(i) The date of the purchase.

(ii) The registration number of the dealer.

(iii) The name and address of the person selling the tobacco.

(iv) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.

(v) The pounds of tobacco purchased.

(vi) The amount of penalty collected.

(vii) The method (estimating or weighing) of determining the pounds of tobacco marketed.

(viii) The signature of the seller and the date signed.

(3) The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Fund as provided for in Part 1464 of this title. For nonauction purchases during the 1982-83 marketing year, the dealer shall deduct three cents per pound from the price paid to the producer for the tobacco, except for a purchase which is identified with a marketing card bearing the notation "No Price Support." For nonauction purchases from producers during the 1983-84 and subsequent marketing years, the dealer shall make a deduction in accordance with Part 1464 of this title from the price paid to the producer for the tobacco; however, a deduction shall not be made if the original "110 percent of quota" entry on the marketing card used to identify the tobacco was zero pounds. The amount of the deduction which is applicable to flue-cured tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Fund for each such marketing year.

(c) *Record and report of purchases and resales.* (1) Each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) Form MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, shall be forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, shall be forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale date of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports together with executed copies of Form MQ-72-2 for all nonauction purchases shall be prepared and forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

(3) The data to be entered on Form MQ-72 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (b)(2) of this section.

(4) At the end of the dealer's annual marketing operation, but not later than December 15, the dealer shall for each kind of tobacco:

(i) Show the word "final" on his final report, MQ-79, for the season, (ii) report on such final MQ-79 for the season the quantity of tobacco on hand and its location, (iii) permit its inspection by a representative of ASCS, and (iv) provide for weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in paragraph (c)(4)(iv) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(5) Notwithstanding the provisions of paragraph (c)(4) of this section, any dealer having tobacco transactions after December 15 shall make reports on Form MQ-79 at the end of each week, as provided in paragraph (c)(2) of this section.

(6) Before the next marketing season begins, carryover tobacco reported by the dealer as provided in paragraph (c)(4) of this section shall be reinspected by a representative of ASCS. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the dealer shall provide for the weighing of such tobacco which shall be witnessed by ASCS. The dealer shall furnish to ASCS at the time of weighing a certification as to the actual weight of such tobacco. If ASCS determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial certification the initial weight together with the reweighed quantity, after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (c)(4) of this section, shall be used for the purpose of determining penalty, if penalty is due. Penalty will be assessed after the initial certification and reconciliation when the redetermined pounds exceeds the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover tobacco.

(7) In addition to Form MQ-79 and MQ-72-2, a Form MQ-79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a contribution to the No Net Cost Tobacco Fund is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the same time the Form MQ-79 on which the purchase is recorded is forwarded. A check, draft, or money order in the amount of the deduction recorded on Form MQ-79 (Supplemental) and

drawn payable to Flue-Cured Stabilization Corporatio shall be forwarded to the State ASCS office at the same time as Forms MQ-79 and MQ-79 (Supplemental).

(d) *Daily report to warehousemen for buyers corrections account.* Notwithstanding the provisions of § 725.102, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly invoiced to him by the warehouseman, shall furnish to the warehouseman on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouseman for that sale day.

(3) Such reports as required under paragraphs (d) (1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the purchasing dealer and the identification number of the warehouse where the purchase was made.

(e) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79 Dealer's Report:

(1) The date delivered; (2) name and address of the firm to which the tobacco was delivered; and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(f) *Tobacco represented to be nonquota kind.* Any dealer who has displayed for AMS inspection, prior to purchase at nonauction, tobacco from a farm in a quota area that is represented to be tobacco of a nonquota kind shall:

(1) Execute a basket ticket which shall have imprinted thereon the type designation for the kind of tobacco normally marketed in the area which shows:

(i) The weight of the tobacco in the basket or sheet, (ii) the sale bill number and line number of the sale bill on which the basket or sheet of tobacco is recorded;

(2) Execute a sale bill which shows: (i) The name and address of the producer; (ii) the State and county code and farm number on which produced; (iii) the pounds in each basket and total pounds for the farm; and shall furnish a copy of each basket ticket and sale bill to the State office at the end of the sale day.

(g) *Reporting of tobacco in the form not normally marketed by producers.* Any dealer, warehouseman, or other person who purchases tobacco from processors or manufacturers under conditions provided in § 725.101(c) shall maintain on a separate Form MQ-79 a record of all such purchases and resales.

[38 FR 27356, Oct. 3, 1973, as amended at 42 FR 27567, May 31, 1977; Amdt. 15, 45 FR 56006, Aug. 22, 1980; Amdt. 4, 47 FR 56485, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.101 Dealer purchases of damaged tobacco or tobacco from processors or manufacturers.

(a) *Damaged tobacco.* Any dealer, warehouseman, or other person who plans to purchase tobacco that was damaged by fire, water, or any other cause shall prior to purchase report such plans to the State ASCS office issuing Form MQ-79, Dealer Record Book. Such report shall be timely made so that a representative of ASCS can determine the marketable value of such damaged tobacco, and so that the weighing and removal of such tobacco can be witnessed by a representative of ASCS. Any damaged tobacco purchased by the dealer before such plans are reported to the State ASCS office and before such tobacco is inspected by an ASCS representative shall be deemed excess tobacco and penalty at the full rate shall be due.

(b) Purchase from processor or manufacturer. Any dealer, warehouseman, or other person who plans to purchase tobacco from a processor or manufacturer shall prior to purchase, report such plans to the State ASCS office issuing Form MQ-79, Dealer Record Book. Such report shall be timely made so that a representative of ASCS can determine the marketable value of the tobacco, and whether the tobacco is in the form normally marketed by producers. The weighing and removal of the tobacco shall be witnessed by a representative of ASCS. Any tobacco purchased from processors or manufacturers before such plans are reported to the State ASCS office and before the tobacco is inspected by an ASCS representative shall be deemed to be excess tobacco and penalty at the full rate shall be due.

(c) Any dealer, warehouseman, or other person who purchases tobacco from processors or manufacturers which is determined by an ASCS representative to be in the form not normally marketed by producers shall, before such tobacco is disposed of or blended with other tobacco in the form normally marketed by producers, report such plans to the State ASCS office issuing Form MQ-79, Dealer Record Book. Such report shall be timely made so as to allow an ASCS representative to witness the disposition of or the blending of such tobacco. Any such tobacco purchased by a [illegible] warehouseman, or other person and marketed, disposed of by any means, or blended with other tobacco before the State ASCS office has been timely notified shall be deemed to have been substituted for excess tobacco, and penalty at the full rate shall be due on each pound of such tobacco.

[Amdt. 15, 45 FR 56006, Aug. 22, 1980]

§ 725.102 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco ordinarily is sold by farmers and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 725.100 except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of paragraph (d) of § 725.100. A dealer or buyer whose resales in the form ordinarily sold by farmers exceed 5 percent of its purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 725.100 (except for requirements which relate to nonauction purchases from producers and requirements of paragraph (d) of § 725.100).

(b) For the 1973-74 and subsequent marketing years, each dealer or buyer shall also make a report not later than February 1 of each year to the Director, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisition of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (July 1 through June 30) which is not included in the February 1 report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show:

(1) For purchases at auction for each warehouse (i) USDA registration number (warehouse code), (ii) name and address of warehouse, (iii) gross pounds originally billed to the buyer, (iv) gross pounds billed to the buyer for which payment was made, (v) gross pounds from the company correction account deducted for short baskets and short weights and returned baskets, and (vi) gross pounds from the company correction account added for long baskets and long weights.

(2) For purchases at nonauction (i) name and address of seller (dealer or farmer), (ii) seller's number (dealer's registration number or farm number, including State and county code), and (iii) pounds purchased.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 1, 39 FR 30823, Aug. 26, 1974; Amdt. 4, 42 FR 9159, Feb. 15, 1977; Amdt. 11, 44 FR 15990, Mar. 16, 1979; Amdt. 4, 47 FR 56486, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.103 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* This section shall not be applicable to 1979 and subsequent crops of tobacco, except for the 1982 crop for which the Flue-Cured Tobacco Cooperative Stabilization Corporation may process and store producer carryover tobacco and may act as the producer's marketing agent in marketing the producer's tobacco during the 1983-84 marketing year. Since carryover producer tobacco, which is processed and stored, may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is processed and stored is important. Any contract or agreement between the farm operator and the warehouseman (or marketing agent) or between the warehouseman (or marketing agent) and the processor or storage firm may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an agreement or contract, any act or verbal agreement which alters the terms or conditions of the agreement or contract submitted for opinion may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent, process, or store processed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds (green weight) delivered for processing shall be charged to the farm's marketing quota when marketed.

(d) *Marketing agent records and reports.* Each marketing agent shall keep such records that will enable him to fulfill the requirements of this section. In addition, the marketing agent shall keep all records relating to the receiving, processing, storage and sale of producer tobacco delivered to him for processing.

(1) *Basket ticket and warehouse floor sheet or other delivery receipt.* The marketing agent shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the marketing agent shall prepare a warehouse floor sheet or other delivery receipt showing as a minimum the following information:

(i) Floor sheet or delivery receipt number;

(ii) Name and address of marketing agent;

(iii) Date tobacco is received;

(iv) Number of pounds in each basket and total pounds green weight received;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The marketing agent shall not receive any tobacco from a farm unless a current year marketing card or a document, which shows the State and county code and farm number, is furnished the weighman, certified by the executive director of the county office serving the farm.

(2) *Furnishing floor sheet or delivery receipt to the State office.* The marketing agent shall by the end of the calendar week in which the tobacco was received furnish to the State office of the State in which the marketing agent's business is located a copy of each floor sheet or delivery receipt for tobacco received during that calendar week. The marketing agent shall attach to the floor sheets or delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(3) *Furnishing floor sheet or delivery receipt and basket ticket to processor.* The marketing agent shall furnish two copies of each floor sheet or delivery receipt to the processor when the to-

bacco identified by such floor sheet or delivery receipt is delivered for processing. One or more copies of each basket ticket shall remain with the respective basket of tobacco.

(4) *Storage warehouse receipts.* The marketing agent is responsible for arranging for the storage and subsequent sale of the tobacco and shall not authorize release of the processed tobacco from storage until such tobacco is sold.

(5) *Sales report.* The marketing agent shall by the end of the calendar week in which processed producer tobacco is sold furnish a sales report to the State office of the State in which his business is located showing:

(i) Purchaser's name, address, and dealer number;

(ii) Date of purchase;

(iii) Date and delivery order number authorizing the storage firm to deliver the tobacco to the purchaser;

(iv) Sale report number (number beginning with number one for each crop year in sequence until all the tobacco for which the marketing agent is responsible is sold);

(v) For each hogshead the hogshead number, grade and original net (processed) weight;

(vi) Total original net processed weight of sale; and

(vii) Percentage (rounded to thousandths of a percent) pounds (original processed net weight) sold is of total net (original processed) weight of pooled tobacco processed.

(6) *Summary sheet.* The marketing agent shall, by the end of the week in which processed producer tobacco is sold, furnish to the State office of the State in which his business is located, a summary sheet for each farm, having tobacco in the pool showing:

(i) Date of sale;

(ii) Purchaser's name, address, and dealer number;

(iii) Processed pounds sold and percentage sale is of total pounds processed rounded to thousandths of a percent;

(iv) Sales report number on which included; and

(v) Total pounds (green weight) sold for subject farm as of that summary computed by multiplying the farm's green weight pounds delivered for processing by a factor determined by adding (*a*) the percent which the pounds (original weight) of stems sold in all sales is to the total pounds net weight processed, and (*b*) the percent which the pounds (original weight) of strips and scrap sold in all sales is to the net weight of the strips and scrap processed; and by subtracting from the sum so determined, the lesser of the percent determined in paragraph (d)(6)(v)(*a*) of this section, or the percent determined in paragraph (d)(6)(v)(*b*) of this section, multiplied by the percent which the original weight of the strips and scrap processed is to the total pounds net weight processed. If all processed tobacco (strips, stems and scrap) is not sold to the same buyer on the same date, the marketing agent shall prepare separate summary sheets for each.

(7) *Retention of records.* The marketing agent shall keep all records including those specified in this paragraph for three years following completion of processed tobacco sales for a crop year pool.

(e) *Processor records and reports.* Each processor of producer-owned tobacco, in addition to the records and reports required by § 725.105, shall keep such records that will enable him to satisfy the requirements of this section. In addition, the processor shall keep all records relating to the receiving, processing, storage and sale of producer carryover tobacco delivered to him for processing.

(1) *Furnishing copy of floor sheet or delivery receipt to State office.* The processor shall furnish a copy of each floor sheet or delivery receipt to the State office of the State in which his business is located by the end of each calendar week in which tobacco represented by such floor sheets or delivery receipts was delivered for processing. The processor shall attach a transmittal memorandum to the floor sheets showing:

(i) Transmittal number (numbered beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(2) *Production record.* The processor shall prepare a production record and furnish a copy to the marketing agent showing the:

(i) Hogshead number for strips, stems and scrap (the grade, gross, tare, and net weight shall be shown by the processor for each); and

(ii) Total pounds net processed weight for tobacco received for processing from such marketing agent.

(3) *Summary of tobacco processed.* The processor shall, by the end of the month in which producer tobacco is processed, furnish the marketing agent and State office of the State in which his business is located a summary showing the pounds green weight:

(i) Delivered for processing; and

(ii) Processed.

(4) *Retention of records.* The processor shall keep all records relating to processing producer tobacco, including those specified in this paragraph, for three years following the year in which such tobacco is processed.

(f) *Storage firm records and reports.* Any firm storing processed producer owned tobacco, in addition to the records and reports required by § 725.105, shall:

(1) Issue to the marketing agent a blanket warehouse receipt with a detailed listing showing for each hogshead of processed producer tobacco stored the hogshead number, grade, gross, tare and net weight; and

(2) Keep records relating to the storage transaction for three years following the year in which the last hogshead for a respective crop year is released by the marketing agent from storage.

(g) *Dealer buyer report.* Any dealer who purchases producer processed tobacco shall, by the end of the calendar week in which such tobacco was purchased, furnish the State office of the State in which his business is located by name of marketing agent for each hogshead purchased the: (1) Grade; (2) crop year, and (3) original net processed weight of each.

(h) *Processed pounds reflected on marketing card.* The county committee shall deduct the pounds green weight delivered for processing from 110 percent of the following year's marketing quota for the farm and reflect the balance on any marketing card issued for the farm.

[38 FR 27356, Oct. 3, 1973, as amended at Amdt. 4, 47 FR 56486, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.104 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.

(a) *General.* This section shall not be applicable to 1979 and subsequent crops of tobacco. Since carryover producer tobacco may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is stored is important. Any contract or agreement between the storage firm and the producer may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an agreement or contract, an act or verbal agreement which alters the terms or conditions of the agreement or contract submitted for opinion may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent or store unprocessed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds green weight delivered for marketing or storage shall be charged to the farm marketing quota when marketed.

(d) *Storage firm records and reports.* Any storage firm storing unprocessed producer owned tobacco, in addition to the records and reports required by § 725.105, shall keep such records that will enable him to satisfy the requirements of this section. In addition, the storage firm shall keep all records related to receiving and storage of producer tobacco.

(1) *Basket ticket and delivery receipt.* The storage firm shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the storage firm shall prepare a delivery receipt showing as a minimum the following information:

(i) Delivery receipt number;

(ii) Name and address of storage firm;

(iii) Date tobacco is received;

(iv) Number of pounds in each basket and total pounds received from each farm;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The storage firm shall not receive any tobacco from a farm unless a current year marketing card or a document which shows the State and county code and farm number, certified by the executive director of the county office serving the farm, is furnished when the tobacco is delivered.

(2) *Furnishing delivery receipt to the State office.* The storage firm shall, by the end of the calendar week in which tobacco was received, furnish to the State office of the State in which the business is located a copy of each delivery receipt for tobacco received during that calendar week. The storage firm shall attach to the delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of delivery receipts submitted in transmittal; and

(iv) Total pounds on delivery receipts submitted by the transmittal.

(3) *Identification of tobacco while stored.* Each basket of tobacco, until removal from storage, shall be identified by a basket ticket attached to the respective basket of tobacco showing the:

(i) Farm operator's name and address;

(ii) State and county code and farm number for the farm; and

(iii) Pounds of tobacco in each basket.

(4) *Storage firm reports.* The storage firm shall furnish to the State office of the State in which the business is located a report by storage location and crop year showing (i) by farms the pounds of unprocessed tobacco and (ii) the total pounds of unprocessed producer tobacco at that location. Should any tobacco be moved from one storage location to another, an amended report shall be furnished by the end of the week in which such tobacco was moved. When tobacco is removed from storage, in addition to any other requirements of this subpart, the storage firm, by the end of the week in which such tobacco was removed from storage, shall furnish the State office a report showing by farm from which received:

(*a*) The pounds removed from storage;

(*b*) The name and address of the person receiving such tobacco; and

(*c*) Date on which removed.

(5) *Retention of records.* All records relating to the storage of producer tobacco including those required by this section shall be retained by the storage firm for 3 years following the removal of such tobacco for a respective crop year from storage.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 11, 44 FR 15991, Mar. 16, 1979]

§ 725.105 Records and reports of truckers, firms redrying, prizing, or stemming tobacco, and storage firms.

(a) Each trucker shall keep such records as will enable him to furnish the State ASCS office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the producer.

(2) The date of receipt of the tobacco.

(3) The number of pounds received.

(4) The location where received.

(5) The name and address of the person to whom it was delivered and the date delivered.

(b) Each firm engaged in the business of redrying, prizing, or stemming tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman, marketing agent, or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying, stemming or prizing).

(5) The amount of any advance or loan made by him on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco (following redrying, prizing or stemming), and number of hogsheads by classification (strips, stems, scrap, leaf).

(7) Persons to whom delivered, pounds involved, and date delivered.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by him at auction or for which he had previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 725.102, he is required to report only such tobacco received that does not belong to him.

(c) Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman, marketing agent or other person for whom the tobacco was received;

(2) The date of receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by him on the tobacco;

(5) The disposition of the tobacco;

(6) The person to whom delivered, the pounds involved and date delivered.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by him at auction or for which he had previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 725.102, he is required to report only such tobacco received for storage that does not belong to him.

[38 FR 27356, Oct. 3, 1973, as amended at 38 FR 29876, Oct. 30, 1973]

§ 725.106 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, buyer, trucker, or as a person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 725.107 Failure to keep records and make reports or making false report or record.

(a) *Warehousemen and dealers*—(1) *Failure to keep records or make reports.* Under the provisions of section 373(a) of the Act, any warehouseman, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouseman, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate recorders shall be subject to an additional fine, not to exceed $5,000.

(2) *Failure to obtain producer's marketing card or dealer identification card.* The failure of (i) any dealer or

warehouseman to obtain a producer's marketing card, MQ-76, to identify a sale of producer tobacco or (ii) any dealer or warehouseman who fails to obtain a dealer identification card, MQ-79-2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representations—ware housemen, dealers, and producers.* The monetary penalties prescribed in §§ 725.94 and 725.95, and the penalties designated in paragraph (a)(1) of this section are in addition to penalties prescribed by other criminal statutes including United States Code, title 18, section 1001, which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "110 percent of quota poundage" on marketing cards.

§ 725.108 Registration of warehousemen and dealers.

Any dealer or warehouseman dealing in flue-cured tobacco shall be registered with the U.S. Department of Agriculture. Such registration will be handled by the North Carolina State ASCS Office, Raleigh, N.C. Any person desiring to register as a dealer or warehouseman shall complete an "Application for Dealer Identification Card" and submit it to the State office. Warehousemen will be assigned a three-digit identification number and dealers will be assigned a four-digit identification number. Persons requesting it will be issued a dealer identification card, Form MQ-79-2.

§ 725.109 Duties of Kansas City ASCS Management Office.

The Kansas City ASCS Management Office (KCMO) has responsibility for processing certain data and making such reports as may be required by the Deputy Administrator.

[48 FR 40640, Sept. 8, 1983]

§ 725.110 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or for obtaining the information required to be furnished, in any report, but not so furnished, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, upon written request by the State executive director, all such books, papers, records, basket tickets, tobacco sale bills, buyer, adjustment invoices, accounts, cancelled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State executive director or the Director has reason to believe are relevant and are within the control of such person.

[Amdt. 1, 39 FR 30823, Aug. 26, 1974, as amended by Amdt. 4, 47 FR 56486, Dec. 17, 1982; 48 FR 40640, Sept. 8, 1983]

§ 725.111 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director, or the Director.

(Approved by the Office of Management and Budget under control number 0560-0001)

(44 U.S.C. 3506)

[38 FR 27356, Oct. 3, 1973, as amended at 47 FR 745, Jan. 7, 1982]

§ 725.112 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, by all members of county and community committees, and all county office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. Nothing in this section shall be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

[Amdt. 4, 47 FR 56486, Dec. 17, 1982 and 48 FR 40640, Sept. 8, 1983]

§ 725.113 Determination of discount varieties.

(a) *Definition.* "Discount Variety" means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244: *Provided,* That where there is growing in a field offtype plants of not more than 2 percent, such offtype plants shall not be considered in certifying the flue-cured tobacco variety being produced. Flue-cured tobacco which is not certified to be discount variety shall be considered as "acceptable variety".

(b) *Producer's report.* The operator, or any producer, on each farm producing flue-cured tobacco shall file with the county office a report on MQ-32 showing whether or not discount variety tobacco was planted on the farm.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county committee on MQ-34-1, Notice of Action Required Regarding Determination of Seed Varieties of Flue-Cured Tobacco, to file a report on MQ-32, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, all flue-cured tobacco produced on such farm shall be considered by the county committee to be discount variety tobacco, unless the county committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* The farm operator having discount variety tobacco shall be given written notice by certified mail on MQ-34-2, Notice of Determination of Discount Variety of Flue-cured Tobacco. The notice to the farm operator shall constitute notice to all persons who as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco being grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who received a Form MQ-34-2 notifying him that the farm has discount variety tobacco when in fact an acceptable variety is being produced may recertify on Form MQ-32.

(f) *Issuance of marketing cards*—(1) *Notation on card.* If a farm is considered to have discount variety tobacco available for marketing and the farm is eligible for price support, the county executive director shall issue MQ-76, bearing the notation "Discount Variety—Limited Price Support". If the farm is considered to have discount variety tobacco but it is not eligible for price support, the county executive director shall issue MQ-76, bearing the notation "Discount Variety—No Price Support".

(2) *Exchange of cards.* (i) Where an MQ-76, bearing the notation. "Discount Variety—Limited Price Support" is issued for a farm, the card may be exchanged at the county office for an MQ-76 without the notation, or (ii) where an MQ-76, bearing the notation "Discount Variety—No Price Support" is issued for a farm the card may be exchanged at the county office for an MQ-76 with the notation "No Price

Support": *Provided*, That the farm operator establishes to the satisfaction of the county committee that there has been no commingling or substitution of discount variety tobacco produced on the farm or on any other farm operated by him, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) *Cards for publicly owned experiment stations.* MQ-76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation "Discount Variety—Limited Price Support" if such tobacco is discount variety tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety and reports on MQ-79-1, Flue-Cured.* Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year he may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when he determines no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehousemen of action required under this paragraph shall be by the State executive director.

(1) *Warehousemen.* (i) Each warehouseman who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than his own, and who requests the other warehouseman to identify such tobacco as being "acceptable variety" shall execute MQ-79-1 (Flue-Cured), Dealer's Certification—Resale Tobacco.

(ii) Each warehouseman who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco with a "certified" basket ticket indicating that such tobacco, by virtue of an executed MQ-79-1 (Flue-Cured) is of an acceptable variety shall at the time the tobacco is weighed in have such tobacco covered by an executed MQ-79-1.

(iii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

(*a*) Crop year.

(*b*) Name and address of warehouse where the tobacco is being offered for sale.

(*c*) Tobacco sale bill number and date.

(*d*) Date, signature of dealer and current address, and dealer identification number.

(2) *Dealer.* (i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a "certified" basket ticket, and who requests the warehouseman to identify his tobacco as being an "acceptable variety", shall execute MQ-79-1 (Flue-Cured), Dealer's certification—Resale Tobacco.

(ii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(*a*) Crop year.

(*b*) Name and address of warehouse where the tobacco is being offered for sale.

(*c*) Date, signature of dealer and current address, and dealer identification number.

(*d*) Tobacco sale bill number and date.

(iii) Each dealer or any person who acquires acceptable variety tobacco in a manner which would make it ineligible for certification on MQ-79-1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(h) *Estimate of production.* For any farm on which discount variety tobacco is being grown, a Form MQ-92, Estimate of Production, shall be obtained.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 2, 40 FR 41516, Sept. 8, 1975; 50 FR 4494, Jan. 31, 1985]

§ 725.114 [Reserved]

§ 725.115 Warehouses authorized to retain producer marketing cards between sales.

Notwithstanding any other provision of this part, to facilitate the scheduling of farmers' tobacco to the warehouse, marketing cards with the permission of the producer may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(a) *Warehouses eligible to retain producer marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by ASCS a written request with the State committee (or county committee if designated by the State Committee).

(2) Agree to be responsible to ASCS for an amount of money equal to the amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Tobacco marketed at the warehouse in excess of 110 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

(i) Name of farm operator;

(ii) Serial number of farm;

(iii) Date marketing card obtained from producer; and

(iv) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request or, in the absence of a request, return it to the producer within seven (7) days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by ASCS for failure to comply with provisions of this agreement.

(b) *Penalties considered to be the responsibility of warehouseman.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State committee (or county committee if designated by the State committee) for authorization to retain producers' marketing cards at the warehouse, with grower permission, shall be responsible to ASCS for an amount of money equal to the amount that may be assessed against producer as marketing quota penalties, provided the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on the producer's marketing card. Except that no warehouse operator shall be responsible for any penalty under this paragraph (b)(1), if such penalty would not have been assessed against the producer in accordance with paragraph (e) of § 725.95.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(4) Tobacco marketed at the warehouse in excess of 110 percent of quota as shown on the producer's marketing card.

[38 FR 27356, Oct. 3, 1973, as amended by Amdt. 2, 40 FR 41516, Sept. 8, 1975]

PART 726—BURLEY TOBACCO

Subpart—Burley Tobacco, 1971-1972 and Subsequent Marketing Years

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AUTHORITY: Secs. 301, 313, 314, 314A, 316B, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65-66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314-1, 1314b-2, 1314c, 1363, 1372-75, 1377, 1378, sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

Subpart—Burley Tobacco, 1971-72 and Subsequent Marketing Years

SOURCE: 36 FR 20651, Oct. 28, 1971, unless otherwise noted.

GENERAL

§ 726.49 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 726) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0058 and 0560-0117.

[48 FR 40646, Sept. 8, 1983]

§ 726.50 Basis and purpose.

The regulations contained in this subpart are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), and are applicable to burley tobacco for the 1971-72 and subsequent marketing years, except that the regulations in Part 724 are applicable for the determination of farm marketing quotas for the 1971-72 marketing year. They govern the establishment of farm marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the keeping of records and making of reports incident thereto. The applicability of the regulations for any marketing year subsequent to the 1971-72 marketing year is contingent upon the proclamation of a national marketing quota for such year pursuant to sections 312 and 319(a) of the Act.

[36 FR 20651, Oct. 28, 1971, as amended at 42 FR 58732, Nov. 11, 1977]

§ 726.51 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this title or chapter shall include current and later amendments to the referenced parts. Unless defined in this section the words or phrases defined in § 719.2 of this chapter shall have the same meaning when used in this part.

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(a-1) *Active burley tobacco producer.* Any person who intends to be a burley tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intention on a form approved by the Deputy Administrator.

(a-2) *Allowable floor sweepings.* The quantity of floor sweeping determined by multiplying 0.0024 times the total producer first sales of burley tobacco at auction for the season for the warehouse involved.

(b) *Auction sale.* A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, including sale of all lots or baskets of tobacco at public auction in sequence at a given time.

(c) *Base period.* The 5 calendar years immediately preceding the year for which farm marketing quotas are currently being established.

(d) *Buyers correction account.* The warehouse account of tobacco purchased at auction by the buyer, but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. This account shall include the pounds and amounts deducted resulting from short baskets and short weights, and pounds and amounts added resulting from long baskets and long weights, which buyers debit or credit to the warehouseman and support with adjustment invoices.

(e) *Current crop.* The crop produced in the current year.

(f) *Dealer or buyer.* A person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers.

(g) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(h) *Effective farm marketing quota.* The current year farm marketing quota plus or minus any temporary adjustments.

(i) *Excess tobacco for a farm.* The quantity of tobacco marketed above 110 percent of the effective farm marketing quota.

(j) *Experimental tobacco.* Tobacco grown by or under the direction of a publicly owned agricultural experiment station for experimental purposes only.

(k) *False identification.* False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on a farm when, in fact, it was produced on a different farm; or

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm; or

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(l) *Farm acreage allotment.* The allotment established for 1970, after any permanent adjustment and prior to any temporary adjustment.

(m) *Farm marketing quota*—(1) *Old farm.* The pounds determined by multiplying the preliminary farm marketing quota by the national factor and adjusting the result for any permanent quota adjustment.

(2) *New farm.* The pounds for the farm determined by the county committee with the approval of the State committee.

(n) *Farm yield.* The farm yield determined as provided in § 726.55 or § 726.65.

(o) *Floor Sweepings.* The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

(p) *Green weight.* The weight of tobacco which is in the form normally marketed by farmers prior to being redried, prized, or processed.

(q) *Hogshead.* A container in which tobacco is packed and stored.

(r) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse (except floor sweepings which accumulate on the warehouse floor), as adjusted by the debits and credits to the buyers corrections account, and including floor sweepings purchased from another warehouse or dealer.

(s) *Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(t) *Marketing recorder or field assistant.* Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketings of tobacco.

(u) *Marketing year.* The period beginning October 1 of the year in which the tobacco is produced and ending September 30 of the following year.

(v) *New farm.* A farm for which a marketing quota is established in the current year which did not previously have a quota established for the current year.

(w) *Nonauction sale.* Any first marketing of tobacco other than by a sale at auction.

(x) *Old farm*—(1) *1971 through 1975 crop years.* A farm which had a 1970 farm acreage allotment or there was burley tobacco planted or considered planted in 1 or more years of the base period.

(2) *1976 or later crop years.* A farm which had burley tobacco planted or considered planted in the base period.

(y) *Overmarketings.* The pounds by which the pounds marketed exceed the effective farm marketing quota.

(z) *Penalty-free carryover tobacco.* The pounds of unmarketed tobacco produced before calendar year 1971 which could have been marketed without penalty during the 1970-71 marketing year.

(aa) *Planted or considered planted credit.* Credit assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm,

(2) Quota is: (i) Leased and transferred from the farm, or (ii) in the eminent domain pool.

(3) A restrictive lease on federally owned land is in effect prohibiting tobacco production, or

(4) Effective quota is zero because of overmarketings or a violation of regulations.

(bb) *Pool.* A quantity of tobacco delivered to a marketing agent.

(cc) *Preliminary farm marketing quota*—(1) *1971 crop year.* The pounds determined by multiplying the 1970 farm acreage allotment by the farm yield.

(2) *1972 and later crop years.* The farm marketing quota for the preceding year.

(dd) *Processed, processing.* A method of preparing green weight tobacco for storage in which the tobacco may be green prized, redried, stemmed, tipped or threshed and the resulting product packed in hogsheads.

(ee) *Production record.* A record prepared by a processor to account for the processing of tobacco.

(ff) *Quota adjustments*—(1) *Temporary.* (i) Effective undermarketings, (ii) overmarketings from any prior year, (iii) reapportioned quota from eminent domain pool, (iv) quota transferred by lease or by owner, (v) pounds in violation of the regulations for a prior year and (vi) for 1971 only, pounds of penalty-free carryover tobacco.

(2) *Permanent.* (i) Old farm adjustment from reserve, (ii) pounds of quota transferred to the farm from the eminent domain pool, (iii) pounds of quota transferred to or from the farm by sale, (iv) pounds of quota transferred to the farm from the forfeiture pool, or (v) pounds of forfeited quota.

(gg) *Resale.* The disposition by sale barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

(hh) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(ii) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(ii-1) *Shared in risk of production.* Involvement in the production of burley tobacco by a person who:

(1) Invests in the production of a crop of burley tobacco in an amount which is not less than 20 percent of the proceeds of the sale of the crop;

(2) Depends solely on a share of the proceeds from the marketing of the tobacco for the return on the investment;

(3) Waits until such crop of burley tobacco is marketed to receive any return on the investment; and

(4) Maintains records, for a period of three years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of this paragraph have been met.

(jj) *Strip, scrap, stem.* Types of products resulting from processing of tobacco where the tobacco is "tipped" and "threshed."

(kk) *Suspended sale.* Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

(ll) *Tobacco.* Burley tobacco, type 31, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture.

(mm) *Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

(nn) *Tobacco in form not normally marketed by producers.* Tobacco leaves, stems, strips, scrap or parts thereof that are the result of green tobacco having been redried, green prized, stemmed, tipped, threshed or otherwise processed.

(oo) *Trucker*. A person who trucks or hauls tobacco for producers or other persons.

(pp) *Undermarketings*—(1) *Actual*. The pounds by which the effective farm marketing quota is more than the pounds marketed.

(2) *Effective*. The smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds leased to the farm for the previous year.

(qq) *Warehouseman*. A person who engages in the business of holding sales of tobacco at public auction.

[36 FR 20651, Oct. 28, 1971, as amended by 38 FR 29591, Oct. 26, 1973; 38 FR 31409, Nov. 14, 1973; Amdt. 5, 39 FR 36958, Oct. 16, 1974; Amdt. 15, 45 FR 67296, Oct. 10, 1980; 48 FR 17521, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983; 49 FR 31053, Aug. 3, 1984]

§ 726.52 Extent of determinations, computations, and rule for rounding fractions.

(a) *General* All prescribed rounding shall be according to the provisions of Part 793 of this chapter.

(b) *Yields and quotas*. Yields and quotas shall be determined in whole pounds.

(c) *Percentage reduction for violation*. A percentage reduction in a tobacco farm marketing quota for violation of this part shall be determined in tenths percent.

[42 FR 58732, Nov. 11, 1977]

§ 726.53 Supervisory authority of State ASC committee.

The State committee may take any action required by these regulations which has not been taken by a county committee. The State committee may also correct, or require a county committee to correct, any action taken by a county committee which is not in accordance with these regulations, or require a county committee to withhold taking any action which is not in accordance with these regulations.

§ 726.54 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 726.55 Determination of farm yields.

(a) *Farm having a previously established farm yield*. The farm yield for a farm on which a farm yield has been established shall be the same in the current year as the farm yield previously established for the farm.

(b) *Farm not having a previously established farm yield*. As required, the county committee shall appraise a farm yield for any farm not having a previously established farm yield. The appraised yield shall be based on similar farms having a farm yield; however, the appraised farm yield may not exceed 3,500 pounds.

[48 FR 17521, Apr. 22, 1983 and 48 FR 40646, Sept. 8, 1983]

§ 726.56 Determining preliminary farm marketing quotas.

(a) *Eligibility*. A preliminary farm marketing quota shall be determined for each old farm except as follows:

(1) The farm or all of cropland has gone out of agricultural production and eminent domain procedure of Part 719 of this chapter does not apply.

(2) Quota pooled under the provisions of Part 719 of this chapter has been canceled.

(3) A new farm quota is canceled.

(4) For 1976 and later crop years there was no acreage of burley tobacco planted or considered planted for any year of the base period.

(b) *Determination*. The preliminary farm marketing quota shall be the farm marketing quota established for the preceding year.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 8, 42 FR 2300, Jan. 11, 1977]

§ 726.57 Determining farm marketing quotas and effective farm marketing quotas.

(a) *Farm marketing quotas*. The farm marketing quota shall be determined by multiplying the national factor as determined by the Secretary for the current year by the preliminary farm marketing quota for the current year and adjusting the result for permanent quota adjustments.

(b) *Effective farm marketing quotas.* The effective farm marketing quota shall be the farm marketing quota plus or minus temporary quota adjustments.

[Amdt. 8, 42 FR 2300, Jan. 11, 1977, as amended at 48 FR 17522, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.58 [Reserved]

§ 726.59 Determination of farm yields for combined farms for 1972 and later years.

The farm yield for a combined farm shall be the weighted average of the farm yields for the tracts being combined.

§ 726.60 Determination of yields for divided farms.

(a) *Contribution method.* Where a tract is separated from the parent farm and the tobacco marketing quota is divided by the contribution method, the farm yield shall be determined as follows:

(1) Where a farm yield was established for the tract prior to the time the tract became part of the parent farm such yield shall be the farm yield for the tract.

(2) Where the tract is one for which a farm yield has never been established, the farm yield shall be the same as the farm yield for the parent farm.

(b) *Where the contribution method is not used.* When a farm is divided and the quotas are divided by any method other than the contribution method, the farm yield for such tract shall be the same as the farm yield established for the parent farm.

[Amdt. 8, 42 FR 2300, Jan. 11, 1977]

§ 726.61 Determination of quotas for reconstituted farms.

(a) Farm marketing quotas shall be reconstituted pursuant to the provisions of Part 719 of this chapter. Where a farm is being divided, other basic data shall be apportioned among the divided tracts the same as the farm marketing quota.

(b) Where carryover tobacco produced on a parent farm is marketed after the effective date of a reconstitution, such marketing shall be charged to the divided tracts in the same ratio (1) as the marketing quotas are established for the divided tracts or (2) as the county committee determines that (i) the proceeds from such marketing are received by the owner or operator of one or more of the divided tracts or (ii) the owners of the divided tracts agree.

[Amdt. 8, 42 FR 2301, Jan. 11, 1977]

§ 726.62 Correction of errors and adjusting inequities in marketing quotas for old farms.

(a) *General.* The farm marketing quota for an old farm may be adjusted to correct an error or adjust an inequity if the county determines, with the approval of a representative of the State committee, that the adjustment is necessary to establish a quota for such farm which is fair and equitable in relation to the quotas for other old farms in the community in which the farm is located. The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total of the preliminary farm marketing quotas in each State to the national total of preliminary farm marketing quotas. Correction of errors shall be made out of that portion of the national reserve held at the national level.

(b) *Basis for adjustment.* Increases to adjust inequities in quotas shall be made on the basis of the past farm acreage and yields of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster as determined under Part 718 of this chapter; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Not to exceed 1 percent of the national marketing quota minus that part of the national reserve set aside for establishing new farm marketing quotas shall be made available for adjusting inequities and correction of errors. The total of all adjustments in old farm quotas under this paragraph shall not exceed the pounds apportioned the county for such purpose.

(c) [Reserved]

(d) *Approved quota.* Adjustments in a farm quota under this paragraph shall become a part of the farm marketing quota.

[36 FR 20651, Oct. 28, 1971, as amended at 38 FR 29592, Oct. 26, 1973; 49 FR 31053, Aug. 3, 1984]

§ 726.63 Time for making reduction of marketing quota for violation of the marketing quota regulations for a prior marketing year.

Any reduction made in a farm marketing quota for the current year for any of the reasons provided for in § 726.92 shall be made no later than April 1 of the current year in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia; or May 1 of the current year in all other States. If the reduction cannot be made by such dates for the current year, the reduction shall be made in the marketing quota next established for the farm, but no later than by corresponding dates in a later year: *Provided,* That no reduction shall be made in marketing quota for any farm for a violation if the marketing quota for such farm for any prior year was reduced on account of the same violation.

§ 726.64 Marketing quotas and yields for farms acquired under right of eminent domain.

(a) *Marketing quotas.* The transfer of farm marketing quotas for farms acquired by an agency having the right of eminent domain to a pool and reallocation from the pool shall be administered as provided in Part 719 of this chapter, substituting farm marketing quotas for farm acreage allotment.

(b) *Yields for receiving farms.* The farm yield for a farm to which a pooled marketing quota is transferred shall be the yield for the receiving farm before transfer except where the receiving farm is not a tobacco farm. In such case, the farm yield shall be the same as the farm yield for the farm acquired by the agency having the right of eminent domain.

(c) *Undermarketings and overmarketings.* Undermarketings of the farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm. The pooled quota is considered planted while in the pool. Therefore, for the purpose of determining undermarketings during the time the quota is pooled, the effective quota is considered to be zero.

(d) *Release and reapportionment.* The displaced owner of a farm may, not later than the final release date established by the State committee for the current year, release in writing to the county committee for the current year all or part of the quota for the farm in a pool under Part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having quotas for burley tobacco. The county committee may reapportion, not later than the final date established by the State committee for requesting reapportioned acreage for the current year, the released quota or any part of it to other farms in the county on the basis of past production of tobacco, land, labor, and equipment, available for the production of tobacco, crop rotation practices, and soil and other physical factors affecting the production of tobacco. The marketing quota reapportioned shall not, for purposes of establishing future farm quotas, be considered as planted on the farm to which the quota was reapportioned. No release and reapportionment of quota under this section shall be the result of any private negotiations between individuals. Any quota released shall be released to the county committee and such quota shall be reapportioned only by the county committee.

(e) *Closing dates for release and reapportionment.* The State committee shall establish a final date for releasing quota to the county committee for reapportionment to other farms in the county having quotas for burley tobacco and a final date for filing a request to receive reapportioned acreage from the county committee for the current year. Such date(s) shall be for the entire State or for areas consisting of one or more counties in the State taking into consideration normal planting dates within the State.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 2, 37 FR 23244, Nov. 1, 1972; 38 FR 29592, Oct. 26, 1973; Amdt. 8, 42 FR 2301, Jan. 11, 1977]

§ 726.65 Determination of marketing quotas for new farms.

The marketing quota, other than a quota under § 726.64, for a new farm shall be that marketing quota which the county committee, with approval of the State committee, determines is fair and reasonable for the farm taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment, available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided,* That the marketing quota so determined shall not exceed 50 percent of the average of the marketing quotas established for two or more but no more than five old tobacco farms which are similar with respect to land, labor, and equipment, available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco.

(a) *Written application.* The farm operator must file an application for a new farm marketing quota at the office of the county committee where the farm is administratively located on or before February 15 of the year for which the new farm marketing quota is requested.

(b) *Eligibility requirements for operator.* A new farm marketing quota may be established if each of the following conditions are met:

(1) *Owner and operator of the farm.* The operator must be the sole owner of the farm. For the purpose of applying this paragraph (b)(1), a person who owns only a part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner and operator of a farm which they own jointly.

(2) *Interest in another farm.* The farm operator shall not own or have an ownership interest in, or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of burley tobacco on the farm.

(4) *Income requirement.* The operator must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products.

(i) *Computing operator's income.* The following shall be considered in computing operator's income.

(*a*) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock, and livestock products, poultry, or other agricultural products, produced for home consumption or other use on the farm(s). The estimated return from the production of any requested new farm marketing quota shall not be included.

(*b*) *Income from nonfarming.* Nonfarming income shall include, but shall not be limited to, salaries, commissions, pensions, social security payments, and unemployment compensation.

(*c*) *Spouse's income.* The spouse's farm and nonfarm income shall be used in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family farm income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(5) *Experience.* Operator must have had experience in producing, harvesting, and marketing of burley tobacco. Such experience must have been gained:

(i) By being a sharecropper, tenant, or farm operator. (Bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement.)

(ii) During at least two of the 5 years immediately preceding the year for which the new farm quota is requested. If the operator was in the armed services during the 5-year period, extend the period 1 year for each year of military service during the 5 years.

(iii) On a farm having a burley tobacco allotment or quota for such years.

(c) *Eligibility requirements for the farm.* A new farm marketing quota may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm marketing quota an allotment or quota for any kind of tobacco.

(2) *Available land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also, continuous production of tobacco must not result in an undue erosion hazard.

(3) *Entire quota designated by owner where farm reconstituted.* A farm which includes land which has no tobacco quota because the owner did not designate a quota for such land when the parent farm was reconstituted pursuant to Part 719 of this chapter shall not be eligible for a new farm marketing quota for a period of 5 years beginning with the year in which the reconstitution became effective.

(4) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment or quota was pooled pursuant to Part 719 of this chapter, which is subsequently returned to agricultural production, shall not be eligible for a new farm marketing quota for a period of 5 years from the date the former owner was displaced.

(5) *Downward adjustment.* New farm marketing quotas established as provided in this section shall be subject to such downward adjustment as is necessary to bring the total of such quotas within the total pounds available for quotas to all new farms.

(6) *Failure to plant.* A new farm marketing quota shall be reduced to zero if no tobacco is planted on the farm the first year.

(7) *False information.* Any new farm marketing quota which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant, shall be canceled by the county committee as of the date the quota was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the quota shall be canceled effective for the current crop year except where the provisions of § 726.66 (d) applies.

(8) *New farm yields.* A farm yield shall be established for each new farm for which a farm marketing quota is established under this section. Such yield shall be appraised by the county committee based on farm yields established for similar farms in the area.

[Amdt. 2, 37 FR 23244, Nov. 1, 1972, as amended by Amdt. 4, 39 FR 30823, Aug. 26, 1974]

§ 726.66 Approval of marketing quotas, and notices to farm operators.

(a) *Review by State committee.* All farm yields and marketing quotas shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination of quota or yield made under these regulations. All yields and marketing quotas shall be approved by a representative of the State committee, and no official notice of marketing quota shall be mailed to a farm operator until such marketing quota has been so approved, except that revised notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional marketing quota, or (2) of quota reductions due to failure to return marketing cards where a satisfactory report of disposition of tobacco is not otherwise furnished.

(b) *Notice to farm operator.* An official notice of the effective farm marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to a quota. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the quota is established. Insofar as practicable, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of the notice of marketing quota certified as true and correct shall be furnished without charge to any person interested in the farm for which the quota is established.

(c) *Mailing notices.* If the records of the county committee indicate that the marketing quota established for any farm may be changed because of (1) a violation of the marketing quota regulations for a prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notice may be delayed: *Provided,* That the notice of marketing quota for any farm shall be mailed no later than April 1 of the current year in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia, or May 1 of the current year in all other States.

(d) *Marketing quota erroneous notice.* If the official notice of the farm marketing quota issued for a farm erroneously stated a marketing quota larger than the correct effective farm marketing quota, the marketing quota shown on the erroneous notice shall be deemed to be the marketing quota and the basis for marketing quota penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the quota crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) had planted tobacco on the farm and was not notified of the correct farm marketing quota prior to planting the tobacco. Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota for the farm.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 1, 37 FR 5687, Mar. 18, 1972]

§ 726.67 Application for review.

Any producer who is dissatisfied with the farm marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm marketing quota, file application in writing with the county ASCS office to have such quota reviewed by a review committee. The procedure governing the review of farm marketing quotas is contained in

Part 711 of this chapter, which is available at the county ASCS office.

§ 726.68 Transfer of tobacco marketing quotas by lease, by sale, or by the owner.

(a) *General.* Effective with respect to the 1983 crop year and in accordance with the provisions of this section, a burley tobacco marketing quota (including any quota which has been pooled in accordance with the provisions of Part 719 of this chapter) may be transferred between farms within a county by sale or lease, or by the owner to another farm owned or operated by such owner. A sale of quota may be made only when required to prevent forfeiture of the quota in accordance with § 726.69. If the farm is subject to a lien, the consent of a lienholder is not required for either a transfer of the quota by sale or a one year transfer of the quota by lease or by the owner to be effective.

(b) *Sale.* If the transfer of a quota is by sale, the transfer shall be based on part or all of the farm poundage quota. The maximum quota that may be transferred is the farm poundage quota.

(c) *Lease or owner.* If the transfer of a quota is by lease or by the owner, transfer shall be based on a part or all of the effective farm poundage quota. The maximum quota that may be transferred is the effective farm poundage quota.

(d) *Transfer provisions*—(1) *Accumulation of quota.* A transfer shall not be approved if the county committee determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately transferring to and from the farm for two or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(2) *Subleasing.* The county committee shall not approve a transfer if the effect would be both a transfer to, and from, the farm during the same crop year: *Provided,* That a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(3) *Transferring farm.* A transfer of quota from a farm by lease or by the owner shall not be approved:

(i) *Purchased and/or reallocated quota.* If the pounds of quota being transferred exceed the difference obtained by subtracting from the effective farm marketing quota the total pounds of quota purchased and/or reallocated from forfeited quota in the current and two preceding years, as adjusted to reflect changes in national quota factors which have occurred since each respective purchase and/or reallocation of quota.

(ii) *New farm.* If the farm is a new farm.

(iii) *Reduction pending.* If consideration of a marketing quota violation is pending which may result in a quota reduction for the farm for the current year. However, if the county committee determines that a decision will not be made on the pending case of or before the date specified in § 726.63, a one-year transfer will be approved if otherwise eligible.

(iv) [Reserved]

(v) *Consent of lienholder.* For a multiple year transfer, if the farm is subject to a lien, unless the lienholder agrees in writing to the transfer.

(vi) [Reserved]

(vii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid: *Provided,* That this provision shall not apply if the claim is paid or the entire proceeds of the lease of the quota are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(viii) *Forfeiture pending.* To the extent that forfeiture of such quota is expected to become final before July 1.

(4) *Receiving farm.* A transfer of quota to a farm by lease or by the owner shall not be approved if the pounds of quota being transferred to the farm by lease or by the owner exceed the smaller of 15,000 pounds or the difference between the farm mar-

keting quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(i) *Limitation.* If the pounds of quota being transferred plus the pounds of quota previously transferred to the farm by lease or by the owner exceed the smaller of 30,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(ii) *Filed on or after October 1.* If the transfer agreement is filed on or after October 1 and if the producers on the farm do not qualify for price support in accordance with the provisions of Part 1464 of this title.

(5) *Selling farm.* A transfer of quota from a farm by sale shall not be approved:

(i) *Forfeiture otherwise required.* Unless forfeiture of the quota otherwise would be required in accordance with § 726.69.

(ii) *Previous purchases and/or reallocated quota.* If the pounds of quota being transferred exceed the pounds of quota for which forfeiture otherwise is required in accordance with the provisions of § 726.69(c).

(iii) *Reduction pending.* If consideration of an indicated marketing quota violation is pending which may result in quota reduction for the farm for the current year. However, if the county committee determines that a decision will not be made on the pending case on or before the date specified in § 726.63, a transfer will be approved if otherwise eligible.

(iv) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the quota in order to prevent forfeiture.

(v) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: *Provided,* That this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the quota are applied against the claim and the county committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(6) *Buying farm.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producer.* Unless the buyer is an active burley tobacco producer.

(ii) *Cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease or by the owner, exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or either of the two preceding years to prevent a forfeiture of the quota.

(e) *Transfer agreement.* In order for a transfer of quota by sale, by lease, or by the owner to be approved for, or beginning in, the current crop year, the transfer must be:

(1) *Form.* Recorded on Form ASCS-375.

(2) *Signatures.* Agreed upon and signed by:

(i) *Lease.* The owner and operator of the transferring farm and the owner or operator of the receiving farm.

(ii) *Sale.* The owner of the selling farm and an active burley tobacco producer who is the buyer. If the buyer is neither owner or operator of the farm to which the quota will be assigned, the owner or operator of the farm must give written consent for the quota to be assigned to the farm.

(iii) *Owner transfer.* The owner of the transferring farm who also must be the owner or operator of the receiving farm.

(iv) *Witness.* An authorized witness who shall be a member of a State or county committee or an ASCS employee. Each person whose signature is required by either paragraph (e)(2)(i), (ii), or (iii) must sign in the presence of an authorized witness, except that when:

(A) The owner and operator of a lessor farm are different persons, the owner or operator, but not both, must sign in the presence of an authorized witness.

(B) Any person whose signature is required is ill, infirm, resides in a distant area, or are in similar hardship situations the requirement of a witness may be waived provided the county executive director mails Form ASCS-375 to such person for the required signature.

(3) *Where to file.* Filed in the county ASCS office which serves the county in which the transferring farm is located for administrative purposes.

(4) *When to file.* Filed on or before July 1 of the current year.

(i) *Lease or owner transfer.* February 15 of the next succeeding year.

(ii) *Sale.* June 30 of the current year.

(f) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years.

(g) *Approval or disapproval of a transfer agreement.* The county committee shall approve each transfer agreement which meets the eligibility conditions as set forth in this section: *Provided,* That the county committee may delegate authority to the county executive director or other county office employee to act on behalf of the county committee and approve a transfer agreement which meets the eligibility requirements as set forth in this section. Such delegation of authority may authorize the county executive director or county office employee to approve any transfer agreement or the delegation of authority may be limited to approval of either transfers by sale or by lease or by the owner. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination.* Any approval or disapproval by the county committee of a transfer agreement should be made within 30 days after the transfer agreement is filed with the county committee unless additional time is required as the result of conditions beyond the control of the county committee. *However,* If an agreement is filed after July 1 which provides for the sale of a quota, a transfer agreement shall not be approved until the next year's quota is computed for the selling farm. In addition, if a marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(2) *Effective date.* An approved transfer agreement shall become effective upon approval by the county committee or its designee.

(h) *Quota after transfer by lease or by the owner.* The effective farm marketing quota shall be determined for both the transferring farm and the receiving farm in accordance with the provisions of § 726.57.

(i) *Apportionment of data and determination of quota after transfer of quota by sale*—(1) *Apportionment of data for the selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(ii) The pounds of quota which have been transferred from the selling farm by lease or by the owner in the current year;

(iii) The pounds of quota which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(iv) The pounds of quota transferred to the farm by lease or by owner in the previous year;

(v) The previous year's farm marketing quota;

(vi) The previous year's effective farm marketing quota; and

(vii) The previous year's marketings.

(2) *Apportionment of data for the buying farm.* The buying farm's share of each respective item of farm data shall be determined by subtracting the pounds which are retained on the selling farm for the respective item from the pounds which were established for the selling farm for the respective item before the current sale of quota: *Provided,* That the pounds of quota transferred from the selling farm by lease or by the owner and/or the

pounds of quota reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which were transferred by lease or by the owner, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(3) *Quotas after transfer.* After adjusting the data in accordance with the provisions of this section, the effective farm marketing quota shall be determined in accordance with § 726.57 for both the buying farm and the selling farm.

(j) *Carryover tobacco.* If tobacco is marketed after the entire farm marketing quota of the producing farm has been transferred by sale, the tobacco shall be considered as having been marketed on each farm to which farm marketing quota was transferred by sale in accordance with a transfer agreement filed after June 30 of the last year in which a farm marketing quota was established for the producing farm. Such marketing shall be prorated to each farm in proportion to the pounds of farm marketing quota purchased by each farm. If there was more than one farm to which a farm marketing quota was transferred by sale, the marketing may be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(k) *Farm division after transfer by lease.* If a farm is divided after there has been a transfer of a marketing quota to the farm by lease, the transferred quota shall be divided in the manner which is designated in writing by the lessee. In the absence of a written designation, the leased quota shall be apportioned in the same manner as the farm marketing quota of the parent farm.

(l) *Multiple year transfer by lease or by owner.* The effective farm marketing quota on a receiving farm having a multiple-year transfer agreement in effect shall be adjusted for each year for which such transfer agreement is in effect to reflect any decrease in the national quota factor which causes the farm marketing quota established for the transferring farm to be less than the pounds of quota which have been transferred to the receiving farm.

(m) *Cancellation of transfer.* (1) A transfer of quota under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county committee. For the purpose of determining any overmarketings and undermarketings from the farms, and for the purpose of determining marketing quota penalties, the cancellation shall be effective as of the date of approval. However, such cancellation shall not be effective for the current marketing year for marketing quota penalties purposes if: (i) The transfer approval was made in error or on the basis of incorrect information which had been unknowingly furnished by the parties to the agreement; and (ii) the parties to the transfer agreement were not notified of the cancellation before the marketing for the receiving farm exceeded the correct effective farm marketing quota. The provisions of this paragraph shall not preclude any application of the provisions with respect to erroneous notice which are set forth in § 726.66.

(2) If a transfer of quota is canceled because of fraud on the part of the owner of the transferring farm but no fraud is attributable to either the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval of the transfer except for purposes of determining marketing quota penalties for the receiving farm. If a transfer of quota is canceled, the overmarketings shall be charged against the farm from which the transfer of quota was made if the farm, after any reconstitution which may be necessary as a result of the fraud, is assigned a quota against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having a quota after any reconstitu-

tion required by such fraud. Notwithstanding the foregoing, any overmarketings on the receiving farm which are in excess of the amount of quota involved in the canceled transfer shall be charged against the receiving farm.

(n) *Dissolution or revision of a transfer agreement.* A transfer agreement may be dissolved or minor revisions made with respect to such agreement if a written request by all parties to the agreement is made to the county committee by February 15 of the current marketing year. After any such dissolution or revision of a transfer agreement, an official notice of the marketing quota shall be issued by the county committee to each of the operators involved in the transfer agreement. If a request to dissolve or revise a multiple-year lease is made after February 15 of the current marketing year, but before the last crop year for which the transfer agreement is effective, the next quotas established for the farms shall reflect the dissolution or revision.

(o) *Considered planted credit.* Considered planted credit shall be given to the transferring farm when tobacco quota is transferred from the farm by lease or by owner.

[48 FR 17522, Apr. 22, 1983 and 48 FR 40646, Sept. 8, 1983, as amended at 49 FR 9707, Mar. 15, 1984]

§ 726.69 Forfeiture of quota.

(a) *Determination of quota subject to forfeiture.* (1) For purposes of paragraph (b) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under Part 719 of this Chapter if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares common ownership (commonly referred to as a "tract") if the parent farm consists of tracts of land having separate ownership.

(2) For purposes of paragraph (b) of this section, the county committee shall apportion, in accordance with the provisions of Part 719 of this chapter, the burley tobacco quota assigned to a farm between the various tracts of land which are separately owned by:

(i) A person which does not use, as described in paragraph (b) of this section, the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes or for educational, instructional or demonstrational purposes.

(ii) An individual, or owned by a person which uses, as described in paragraph (b) of this section, the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or for educational, instructional or demonstrational purposes.

(3) The farm marketing quota determined under this section for each farm or tract, as applicable, shall be the amount of quota subject to forfeiture under this section.

(b) *Person which does not use the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or does not use such burley tobacco maketing quota for educational, instructional or demonstrational purposes.* For purposes of this paragraph, the term "person" means a person as defined in Part 719 of this chapter, including any government entity, public utility, educational institution, religious institution or joint venture (but not including any farming operation involving only a husband and wife), but excluding any individual.

(1) *Required forfeiture.* Any person which owns a farm for which a burley tobacco marketing quota is established and does not use the land on such farm for agricultural puposes, or does not use such burley tobacco marketing quota for educational, instructional or demonstrational purposes, shall forfeit such quota which is not sold on or before:

(i) *Farm owned or acquired before January 1, 1983.* December 1, 1984.

(ii) *Farm acquired on or after January 1, 1983.* December 1 of the year after the year in which the farm is acquired.

(iii) *Owner ceases to use the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes or does not use such burley tobacco marketing quota for educational, instructional or demonstrational purposes.* December 1 of the year after any year for which the county ASC committee determines that any person which formerly used the land on such farm for agricultural purposes or formerly used the burley tobacco marketing quota for educational, instructional or demonstrational purposes no longer uses the land or the quota for such purposes.

(2) *Agricultural Purposes.* Land on the farm for which a burley tobacco marketing quota is established shall be considered to be used for agricultural purposes if the county ASC committee determines that: (i) In the current year or either of the 2 preceding years such land is used for the production of: (A) Row crops of any type; (B) livestock or poultry (including pasture and forage for livestock); (C) trees (including orchards and vineyards); or (D) hay or native grasses on open land; or (ii) in the current year such farm is owned by an educational institution which uses such burley tobacco marketing quota solely for educational, instructional or demonstrational purposes.

(3) *Documentation.* Within 30 days, after a written request is made by the county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to this request the county ASC committee shall determine that the person does not use the land on the farm for agricultural purposes, or does not use the burley tobacco marketing quota for educational, instructional or demonstrational purposes.

(c) *Buyer of quota fails to share in risk of production*—(1) *Forfeiture required.* If any person buys burley tobacco quota in accordance with the provisions of § 726.68 and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the five crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased quota.* The failure to utilize purchased burley tobacco quota for the production of tobacco shall not result in the forfeiture of such quota, but the five year period which is specified in paragraph (c)(1) of this section shall be extended one year for each year in which the quota is not utilized.

(3) *Reduction for failure to share in risk of production.* The effective quota shall be reduced, but not below zero pounds, for leasing and marketing quota purposes only, to the extent of the purchased quota for each crop year after the crop year in which the buyer of such quota fails to share in the risk of producing a crop of tobacco which is subject to such quota.

(4) *Determining forfeited amount.* If only part of the quota on a farm is attributable to a purchased quota, the amount of the farm marketing quota which must be forfeited under paragraph (c) of this section shall be determined by increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect changes in national quota factors since the purchase occurred and subtracting the pounds of quota which have been sold to prevent forfeiture.

(d) *Hearing.* Before any forfeiture of quota becomes effective under the provisions of this section, the county committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county committee as to whether or not:

(i) Any of the conditions for forfeiture specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of allotment and quota when such forfeiture conditions have been determined to exist with respect to the provisions of paragraph (b) of this section.

(4) Notify the affected person of the county committee determination and, if forfeiture of quota is to be required,

afford such person an opportunity to appeal to a review committee in accordance with the provision of Part 711 of this chapter.

(e) *Apportionment of data and determination of quota after forfeiture*—(1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the forfeiting farm before the forfeiture to determine a factor for apportioning farm data. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data of the forfeiting farm:

(i) The overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(ii) The pounds of quota transferred from the forfeiting farm by lease or by the owner in the current year.

(iii) The pounds of quota reduced in the current year for a marketing quota violation in a prior year.

(iv) The previous year's effective farm marketing quota.

(v) The previous year's marketings.

(vi) The previous year's farm marketing quota.

(vii) The pounds of quota transferred to the farm by lease or by the owner in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the pounds of each respective item of farm data which are retained on the forfeiting farm from the pounds of the respective item of data which were established for the forfeiting farm before the forfeiture.

(2) *Forfeiture pool data.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Quota after forfeiture.* After adjustment of data, the effective farm marketing quota shall be determined in accordance with the provisions of § 726.57 for the forfeiting farm.

(f) *Forfeiture pool*—(1) *Forfeiture pool required.* A forfeiture pool shall be established in each county in which a forfeiture of quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of:

(i) The farm marketing quota for the current year.

(ii) The quota reduced for marketing quota violations.

(iii) The quota transferred from the forfeiting farm by lease or by the owner.

(iv) The previous year's effective farm marketing quota.

(v) The previous year's marketings.

(2) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factor used in determining quotas for old farms. Quota data in the forfeiture pool shall be decreased each time any burley tobacco quota is reallocated from the forfeiture pool. Such decrease in the quota data will be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(g) *Reallocation of quota from forfeiture pool*—(1) *Application.* In order to establish eligibility to receive quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before April 30. *Provided,* That the State committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county ASCS office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for quota from the forfeiture pool the county committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active tobacco producer.

(iii) During the current year or during the four years preceding the current year, the applicant has not sold or forfeited quota from any farm.

(3) *Time to reallocate.* The county committee shall:

(i) Not reallocate any quota from the forfeiture pool until the time has passed for filing an application for forfeited quota for the current year.

(ii) Reallocate any quota from the forfeiture pool only during the 30-day period beginning on the day after the final date for filing an application for quota from the forfeiture pool.

(4) *Reallocation by county committee.* Reallocation of any burley tobacco quota shall be made by the county committee. In making its determination of the amounts of quota to reallocate, the county committee may consider the size of the current quotas on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), previous leasing history of applicants, and such other factors which in the judgment of the county committee should be considered. A burley tobacco quota may be reallocated to a farm which currently does not have a burley tobacco quota. A factor shall not be used to reallocate quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to reallocate.* The county committee may reallocate all or part of the quota in the forfeiture pool. The minimum and maximum amounts of quota which may be reallocated to an eligible applicant are:

(i) *Minimum.* The total amount of quota in the pool or 100 pounds, whichever is less.

(ii) *Maximum.* 500 pounds *Provided,* That not to exceed 1,500 pounds may be reallocated with State committee approval.

(7) *Data for receiving farm.* All quota data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The data determined for the receiving farm in accordance with the provisions in this paragraph shall be added to any previous data for the receiving farm.

(8) *Quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the effective farm marketing quota shall be determined for the receiving farm in accordance with the provisions of § 726.57.

(h) *Forfeiture of reallocated quota.* Any burly tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the five years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota: *Provided,* That while the failure to utilize a quota shall not subject the quota to forfeiture, the five year period which is specified in this paragraph shall be extended by a year for each year in which the allotment and quota is not utilized.

(i) *Successor-in-interest.* A successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest has been assumed by such successor-in-interest.

(1) *New owner of farm.* The new owner of a farm on which a portion or all of the farm marketing quota for such farm was either purchased and/or was reallocated from forfeited quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 30 of the current crop year and such owner would otherwise be required to sell or forfeit the farm marketing quota because in the preceding crop year the owner of such quota did not share in the risk of producing a crop of tobacco which was subject to such

purchased or reallocated quota, the new owner may be considered the buyer of the quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county committee on or before June 30 of the current year a certification that such owner intends to become an active burley tobacco producer. Any purchased or reallocated quota, which is acquired by a new owner who is considered to be the buyer of quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of burly tobacco quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of production of burley tobacco produced on the farm.

[48 FR 40646, Sept. 8, 1983, as amended at 49 FR 31053, Aug. 3, 1984]

§ 726.70 Transfer of tobacco farm acreage allotment for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco marketing quota for any farm in the county. The county committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco quota within the farm marketing quota for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such quota cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county committee for the nearby county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The quota to be transferred shall not exceed the smaller of (1) the effective farm quota established under this part less such quota planted to tobacco and not destroyed by the natural disaster, or (2) the quota requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that the following conditions have been met:

(1) All or part of the effective farm quota for the farm from which the quota is to be transferred could not be timely planted or replanted because of the natural disaster and planting was not prohibited by the lease in the case of lands owned by the Federal Government.

(2) One or more of producers of tobacco on the farm from which the quota is to be transferred will be a bona fide producer engaged in the production of tobacco on the farm to which the quota is to be transferred and will share in the crop or in the proceeds of the tobacco.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Planted or considered planted credit and eligibility as an old tobacco farm.* Any quota transferred under this section shall be considered for the purpose of determining future quotas to have been planted to tobacco on the farm from which such quota is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers under this section with the county committee shall be July 15 of the current year. The county committee may accept applications filed after such closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

[36 FR 20651, Oct. 28, 1971, as amended at 38 FR 29593, Oct. 26, 1973; Amdt. 7, 40 FR 56422, Dec. 3, 1975]

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

§ 726.80 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco which is determined by a representative of the State committee or county committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind until it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR Part 29), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Effective with respect to the 1982 and subsequent crops of tobacco, any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of quota tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1949.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (type 61) tobacco when it is nonquota tobacco and produced in Connecticut or Massachusetts, and to cigar-wrapper (type 62) tobacco when it is nonquota tobacco and produced in Georgia or Florida; and

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards issued by the Secretary for the inspection and identification of tobacco. Such inspection and identification shall be made prior to removal of the tobacco from the State where it was produced.

(Secs. 301, 313, 314, 320, 372-375, 52 Stat. 38, as amended, 88 Stat. 1089, as amended, (7 U.S.C. 1301, 1313, 1314, 1314(c), 1314(f), 1372, 1375))

[47 FR 10774, Mar. 12, 1982, as amended by Amdt. 2, 47 FR 28913, July 2, 1982]

§ 726.81 Issuance of marketing cards.

(a) *General.* (1) A marketing card (MQ-76) shall be issued for the current marketing year for each farm having tobacco available for marketing. The operator or producer's estimated planted acreage as reported on MQ-38 shall be considered in determining whether or not tobacco is available for marketing. Cards shall be issued in the name of the farm operator except that (i) cards issued for experimental tobacco shall be issued in the name of the experiment station, and (ii) cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer who is not the farm operator if the county committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the current crop.

(2) If the county committee has reason to believe that one or more producers of the current crop tobacco on the farm have been or likely will be deprived of the right to use such marketing card to market his or their proportionate shares of the crop, a hearing shall be scheduled by the county committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county committee. If the farm operator or other producers on the farm do not attend the hearing, or are not represented, the county committee may take whatever action it deems proper on the basis of information available to it. If the county committee finds that any such producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 110 percent of the producer's proportionate share of the effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market his proportionate share of the crop and another marketing card (or other cards if considered preferable by the county committee) shall be issued showing 110 percent of the balance of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer on the farm of the current crop.

(b) *Person authorized to issue marketing cards.* The county executive director shall be responsible for the issuance of marketing cards.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

(2) Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *"No Price Support".* The notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* Any producer on the farm if the producers on the farm are ineligible for price support in accordance with the provisions of Part 1464 of this title.

(2) *Producer.* A producer on a farm if the producer is ineligible for price support in accordance with the provisions of Part 1464 of this title.

(e) *Cards for experimental tobacco.* A marketing card shall be issued to identify experimental tobacco.

(f)(1) *Farm quota data entered on marketing card and supplemental card.* Any marketing card issued to market tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 110 percent times the effective farm marketing quota: *Provided,* That, if the tobacco available for marketing from the farm is determined by the county committee or the county executive director to be less than the effective farm marketing quota and the quota is not eligible to be transferred from the farm under the provisions of § 726.68, the pounds determined to be available for marketing for purposes of issuing a marketing card shall be considered the effective farm marketing quota for the farm; *And provided further,* That if any producer on the farm satisfies the county committee or county executive director that the production of tobacco on the farm exceeds the pounds of quota initially entered on the marketing card, the pounds may be increased but not to exceed 110 percent times the effective farm marketing quota: *Provided,* That where a farm marketing quota is transferred by lease to a farm having no farm marketing quota (basic quota), such entry shall be limited to the effective farm marketing quota.

(2) Where the farm operator requests it, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The balance of 110 percent of quota from prior marketing card shall be shown in the first space on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator so requests in writing and specifies in writing the number of pounds to be assigned to each card. In such cases, each marketing card shall show the assigned quota plus 10 percent of such assigned quota in the space "110 percent of quota".

(4) If, when authorized under Part 1421 of this title, a producer requests and obtains from the county committee an interim advance of CCC funds on part or all of his tobacco crop prior to marketing thereof, the estimated quantity of tobacco upon which the interim advance was made shall be entered in parentheses on the reverse side of the marketing card in the space for recording sales. Any poundage balance of the "110 percent of quota" data shall be entered below the estimated pounds upon which an interim advance was made.

(g) [Reserved]

(h) *Other data entered on marketing cards and supplemental card.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 2, 37 FR 23246, Nov. 1, 1972; Amdt. 4, 39 FR 30823, Aug. 26, 1974; Amdt. 7, 40 FR 56422, Dec. 3, 1975; Amdt. 15, 45 FR 67297, Oct. 10, 1980; 48 FR 17524 Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.82 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that subject to prior liens, the net proceeds from any tobacco pledged as collateral for a price support loan shall be paid to the "Agricultural Stabilization and Conservation Service, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the marketing card shall be revised to show the claim balance. If requested by the producer, the county executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county executive director, two or more marketing cards may be issued for any farm. Upon the return to the county office of a marketing card which has been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen.

[36 FR 20651, Oct. 28, 1971, as amended at 48 FR 17524, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.83 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) Any erasure or alteration has been made and not properly initialed by the county executive director or a marketing recorder.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county executive director who issued the card, or by a marketing recorder), the farm operator, or the person having the card in his possession, shall return it to the county office where it was issued.

§ 726.84 Misuse of marketing card.

Any information which causes a marketing recorder, a member of a State, county, or community committee, or an employee of the State or county office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm, shall be reported immediately by such person to the county or State office.

§ 726.85 Identification of marketings.

(a) *Identification of producer marketings.* Each auction and nonauction marketing of tobacco from a farm in a quota area in the current year shall be identified by a marketing card. Form MQ-76, issued for the farm unless an AMS certification shows it to be nonquota tobacco. The reverse side of the marketing card shall show in pounds (1) 110 percent of quota, (2) balance of 110 percent of quota after each sale, and (3) date of each sale. Each producer sale at auction shall be recorded on a Form MQ-72-1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on Form MQ-72-2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ-72-2 and shall enter the data on MQ-76. For producer sales at auction, Form MQ-72-1 and Form MQ-76 shall be executed only by the ASCS marketing recorder.

(b) *Verification of penalty by warehousemen or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouseman or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouseman or dealer shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(c) *Check register.* The serial number on the tobacco sale bill(s) shall be recorded by the warehouseman on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(d) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ-79-2, issued to the dealer.

(e) *Separate display on auction warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco except where the tobacco is represented to be a nonquota kind the basket ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(3) Make and keep records that will insure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(f) *Cross-reference of tobacco sale bill number to prior tobacco sale bill covering tobacco identified by the same marketing card to be sold the same day.* Each warehouseman shall for each lot of tobacco weighed in on his floor for sale the same day cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouseman in the "Remarks" space on the tobacco sale bill on all copies at the time he weighs in the tobacco at the warehouse.

(g) *Identification of returned first sale (producer) tobacco.* Tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouseman, it shall be identified as leaf account resale tobacco.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 2, 37 FR 23246, Nov. 1, 1972; 38 FR 29593, Oct. 26, 1973]

§ 726.86 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the FEDERAL REGISTER.

[49 FR 29563, July 23, 1984]

§ 726.87 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer through an auction sale shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer in the case of a sale.

(c) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 726.88 Penalties considered to be due from warehousemen, dealers, buyers, and others excluding the producer.

Any marketings of tobacco under any of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without marketing card.* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouseman unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Nonauction sale.* Any nonauction marketing of tobacco which:

(1) Is not identified by a valid marketing card and recorded at the time

of marketing on MQ-79, Dealer's Report, the marketing card and MQ-72-2 Report of Nonauction Purchase; or

(2) If purchased prior to the opening of the local auction market for the current year, is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2 report of tobacco nonauction purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79 unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(c) *Leaf account tobacco.* If part or all of any marketing of leaf account tobacco (including tobacco from the buyers corrections account), when added to prior leaf account resales, is in excess of prior leaf account purchases, such marketing shall be considered to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco.

(d) *Dealer's tobacco.* The burley tobacco resales by a dealer (as shown or due to be shown on Form MQ-79), which are in excess of his total prior burley tobacco purchases (as shown or due to be shown on Form MQ-79) shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. Penalty due which is not withheld by a warehouseman shall be remitted weekly by the dealer to the State office with his reports on Form MQ-79.

(e) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouseman or dealer, but which is not so reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State executive director. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed to be a marketing of excess tobacco. The penalty thereon shall be paid by such person.

(g) *Carryover tobacco.* Any tobacco on hand and reported or due to be reported under § 726.93(g)(14) for warehousemen and § 726.94(c)(4) for dealers shall be included as a resale in determining whether an account has excess resales. Unless the warehouseman furnishes proof acceptable to the State committee and unless the dealer furnishes proof acceptable to the State executive director, showing that such account does not represent excess tobacco, penalty at the full rate shall be paid thereon by such warehouseman or dealer.

(h) *Floor sweepings.* Effective for the 1982 and subsequent crops of tobacco, any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price, as specified in § 726.86, for the immediately preceding marketing year. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days after the warehouse closes for the auction season shall be considered as marketed. The floor sweepings on hand shall be weighed by the warehouseman and the weight shall be certified by the warehouseman, such weighing to be done in the presence of a representative of either the county committee or the State committee. Floor sweepings which are destroyed in the presence of a representative of the county committee within 30 days after the warehouse closes for the season shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county committee determines, after the warehouse has been closed for the auction season for more than 30 days, that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of Part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity to a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Agricultural Stabilization and Conservation Service, USDA" within 15 days after the date of mailing of the notice.

[36 FR 20651, Oct. 28, 1971, as amended at 38 FR 29593, Oct. 26, 1973; Amdt. 4, 39 FR 30824, Aug. 26, 1974; Amdt. 5, 39 FR 36958, Oct. 16, 1974; Amdt. 7, 40 FR 56422, Dec. 3, 1975; 48 FR 17524, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.89 Producers penalties; false identification; failure to account; canceled quotas; overmarketing proportionate share.

(a) *Penalties for marketing over 110 percent of quota.* Penalty at the full rate shall be due on any marketings which exceed 110 percent of the effective farm marketing quota.

(b) *Penalties for false identification or failure to account.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, penalty at the full rate shall be due on the larger of:

(1) The actual marketings above 110 percent of the effective farm marketing quota, or (2) the amount of tobacco equal to 25 percent of the effective farm marketing quota. The requirement of paragraph (b)(2) of this section shall not be applied for the 1973-4 and subsequent marketing year if the county committee determines (with concurrence of State committee) that assessment of penalty based on 25 percent of the effective farm marketing quota would be unduly harsh when compared with the pounds in violation and no adverse effect on the program would result.

(c) *Canceled quota.* If part or all of the tobacco produced on a farm has been marketed and the quota for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota.* If the county committee determines that the farm operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing his proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound marketed above 110 percent of his proportionate share of the effective farm marketing quota:

Provided, That the sum of such penalties shall not exceed the total penalty due on total marketings above 110 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph (d), a hearing shall be scheduled by the county committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing tobacco sale bills and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county committee may take whatever action it deems necessary to assess penalty against the proper producers. If a hearing under § 726.81(a) is being held, and it is practicable to do so, such hearing and the hearing under this paragraph may be combined.

(e) *Penalties not to be assessed.* Where the operator or another producer on the farm markets a quantity of tobacco above 110 percent of the effective marketing quota for the farm and such overage is found to have been caused by the failure to record, or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer on the farm if:

(1) For amounts of $10 or less the county committee, and (2) for amounts above $10 the county committee, with the approval of the State committee, determines that each of the following conditions is applicable:

(i) The failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and (ii) the farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketing for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph (e) shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

(f) *Ineligible for price support.* Effective for the 1983 and subsequent crops, a penalty at the basic rate as specified in § 726.86 for the current marketing year shall be assessed with respect to any marketings of burley tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agreed to make a contribution to the No Net Cost Account as required by Part 1464 of this title.

[38 FR 29593, Oct. 26, 1973, as amended by Amdt. 7, 40 FR 56422, Dec. 3, 1975; 48 FR 17525, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.90 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State ASCS office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale—net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sale.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

(d) *Request for return of payment.* Any producer of tobacco and any other person who paid any penalty after the marketing of all tobacco available for marketing from the farm may request the return of the amount of any such payment which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the county office within 2 years after the payment of the penalty. Approval of return of any such payment to a producer shall be by the county committee, subject to the approval of the State executive director.

[36 FR 20651, Oct. 28, 1971, as amended at 48 FR 17525, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.91 Lien for penalty.

(a) *Lien on tobacco.* Until the amount of any penalty which is imposed in accordance with the provisions of section 314 of the Act (7 U.S.C. 1314) is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

(1) The tobacco with respect to which such penalty is incurred.

(2) Any other tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien on any other tobacco attaches at the time the debt is entered on a debt record in:

(1) *Indebted producers.* The county ASCS office for the county in which a subsequent crop of tobacco is grown.

(2) *Indebted warehouseman.* The State ASCS office for the State in which the warehouse is located.

(3) *Indebted dealer.* The State ASCS office for the State to which the dealer is required to file reports.

(c) *List of tobacco penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record for the respective office. The list shall be available for examination upon written request by any interested person.

[48 FR 17525, Apr. 22, 1983 and 48 FR 40646, Sept. 8, 1983]

RECORDS AND REPORTS

§ 726.92 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* If any producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to the amount of tobacco produced on or marketed from the farm, the tobacco quota next established for any such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the failure to file, filing of, or aiding or acquiescing in the filing of, such report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false: *Provided,* That the failure to file or the filing of or aiding or acquiescing in the filing of the report will be construed as intentional unless a correct report is filed and any penalty is paid in full, or (2) no person connected with the farm for the year for which the quota is being established caused, aided, or acquiesced in the filing of the false report or failure to file a report. If the conditions in paragraphs (a) (1) and (2) of this section are not applicable, the next established quota shall be reduced for the farm.

(b) *Report of experimental tobacco.* For a farm on which experimental tobacco is being grown, the director of a publicly owned agricultural experiment station shall furnish the State ASCS office, prior to the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, a report for the current year showing the following information:

(1) Name and address of the publicly owned agricultural experimental station.

(2) Name of the owner, and name of the operator if different from the owner of each farm on which experimental tobacco is grown.

(3) The acreage of experimental tobacco grown on each farm.

(4) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only, the tobacco was grown under his direction, and the acreage on each farm was considered necessary for carrying out the experiment.

(c) *False identification.* Where false identification (see § 726.51(k)) occurs as to any tobacco, the marketing quota next established for the farm or farms and kind of tobacco involved shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing: *Provided,* That, the marketing shall be construed as intentional, unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in such marketing. The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are very small when compared to the effective quota, and no adverse effect on the operation of the tobacco program in the area would result.

(d) *Report on marketing card.* The operator of each farm on which tobacco is produced shall return to the county ASCS office each marketing card issued for the farm whenever marketings from the farm are completed, and, in no event, later than 20 days, in the year of issuance of the card, after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county committee. Upon failure to satisfactorily account to the county committee for disposition of tobacco marketed from the farm the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county committee and a representative of the State committee, that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided,* That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made; or (2) no person connected with such farm for the year for which the quota is being established, caused, aided, or acquiesced in the failure to furnish such proof.

(e) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator on each farm or any producer on the farm (even though no quota was established for the farm) shall, upon written request by certified mail from the State or county committee, within 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ-108, Report of Production and Disposition, a written report on the production and disposition of all tobacco produced on the farm by sending the same to the State or county committee showing, as to the farm at the time of filing such report:

(1) The total harvested acres, (2) the pounds of tobacco on hand and its location, (3) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price paid, and the date of marketings, and (4) the complete details as to any tobacco disposed of other than by sale. Failure to file the MQ-108 as requested, the filing of an MQ-108, which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure of the producer to account for disposition of tobacco produced on the farm and the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that (i) failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition:

Provided, That such failure will be construced as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in the failure to furnish such proof. The operator on each farm or any producer on the farm (even though no quota was established for the farm) shall, upon written request from the county committee, furnish on Form MQ-108-1, Report of Unmarketed Tobacco, a written report of the amount and location of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county committee within 15 days after the request was mailed to such person at his last known address. Failure to file the MQ-108 or MQ-108-1 as requested, the filing of an MQ-108 or MQ-108-1 which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure of the producer to account for disposition of tobacco produced on the farm and the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition:

Provided, That (i) such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided or acquiesced in the failure to furnish such proof.

(f) *Amount of quota reduction.* The farm marketing quota determined for a farm for the current year shall be reduced by that amount of tobacco which is involved in a marketing quota violation as described in paragraph (a), (c), (d), or (e) of this section which occurred in any prior year. However, the amount of such reduction shall not exceed the current year farm marketing quota. The county committee shall determine the amount of tobacco involved in the marketing quota violation. If the actual quantity of tobacco involved in such violation is unknown, the county committee shall determine the quantity by considering both the condition of the crop during production, if known, and such other information as is available.

(g) *Quota reduction for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the quota for which a reduction is required.

(h) *Quota reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the quotas for divided farms required to be reduced. Quota reductions are applicable, unless the violating producer has no interest in the current tobacco crop.

(i) *Unauthorized erasure or alteration on marketing card.* Any unauthorized erasure or alteration of any information or data on a marketing card may be considered a violation of the U.S. criminal statutes.

(j) *County administrative hearings in connection with violations.* Except for the failure to return a marketing card to the county office, the quota for any farm shall not be reduced for a violation under this section until after the operator of the farm has been notified in writing by the county executive director of the time and place of a hearing to determine the nature and extent of the violation. The notice of the hearing shall request the farm operator to bring to the hearing tobacco sale bills and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken on the violation shall be taken after the hearing. If the farm operator does not attend the hearing or is not represented, the county committee may take whatever action it deems proper.

(k) *Sequence of quota reduction where the farm allotment is to be reduced because of a violation and overmarketings.* If the tobacco quota for a farm is to be reduced in the current year because of both (1) a violation and (2) overmarketings in a prior year, the reduction in the quota for the violation shall be made before making the reduction for overmarketings.

(l) *Correction of farm production records.* Where farm data for actual marketings are determined to be incorrect because of a violation, the records shall be corrected for each farm on which the tobacco was produced, and for each farm whose card was used to identify marketings.

(m) *Report on Form MQ-92, Estimate of Production.* An estimate of production, Form MQ-92, shall be prepared immediately prior to harvest for each farm for which the county or State ASC committee or a representative of the county or State committee believes that an MQ-92 for the farm would be in the best interests of the program. The county committee shall have authority to visit any farm for the purposes of making an estimate of production or determination of planted acreage needed to complete an estimate of production.

(Approved by the Office of Management and Budget under control number 0560-0001)

(44 U.S.C. 3506)

[36 FR 20651, Oct. 28, 1971, as amended at 38 FR 29593, Oct. 26, 1973; Amdt. 7, 40 FR 56422, Dec. 3, 1975; Amdt. 12, 44 FR 15992, Mar. 16, 1979; 47 FR 745, Jan. 7, 1982; 48 FR 17525, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.93 Warehouseman's records and reports.

Each warehouse shall keep the records and make the reports separately for each kind of tobacco (quota and nonquota) as provided in this section.

(a) *Record of marketing*—(1) *Auction sale.* Each warehouseman shall keep such records as will enable him to furnish the State office with respect to each auction sale of tobacco made at his warehouse the following information.

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a sale by a producer, and the name of the seller in the case of a resale.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer. In addition, with respect to each individual basket or lot of tobacco constituting the auction sale, the following information:

(*a*) Name of purchaser.

(*b*) Number of pounds sold.

(*c*) Gross sale price.

(2) *Separate account records.* Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonauction sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco. The resale record shall include separate data for leaf account tobacco and floor sweeping tobacco.

(3) *Buyers corrections account.* Each warehouseman shall keep such records including negative adjustment invoices as will enable him to furnish a weekly report on Form MQ-71 to the State ASCS office showing the total pounds of the debits (for returned baskets, short baskets, and short weights of tobacco) and credits (for long baskets, and long weights of tobacco) to the buyers corrections account. Where the warehouseman returns to the seller tobacco debited to the buyers corrections account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the buyers corrections account and a corresponding purchase (debit entry) in the case of a dealer on his MQ-79, Dealers Record. Any balancing figure reflected on the warehouseman's summary of bill-outs shall not be included in the buyers corrections account.

(4) *Tobacco sale bill and daily warehouse sales summary.* Each warehouseman shall use tobacco sales bills showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) Name and address of warehouse where sale is held;

(iii) Date of sale;

(iv) Number of pounds in each basket;

(v) Name and address of seller and (*a*) farm number (including State and county codes) for producer tobacco, and (*b*) dealer registration number for resale tobacco;

(vi) Identification number, if available, for each basket of tobacco to be offered for sale;

(vii) Poundage balance before sale for producer tobacco based on 110 percent of farm quota;

(viii) Name or symbol of purchaser of each basket;

(ix) Gross number of pounds sold;

(x) Sales price for each basket and gross sale proceeds for all baskets sold;

(xi) Nonauction purchases by the warehouse holding the sale;

(xii) Tobacco grade for tobacco consigned to price support;

(xiii) Marketing quota penalty collected; and

(xiv) Amount withheld from sale to cover claims due the United States.

The warehouseman shall not weigh in any tobacco for sale unless a marketing card (MQ-76 for producers, MQ-79-2 for dealers) is furnished the weighman or the tobacco is represented to be a nonquota kind which is required to be displayed in a separate area on the warehouse floor under § 726.85(e) of these regulations. The buyer and grade space on the tobacco sale bill shall show nonauction purchases by the warehouse, tobacco grade for tobacco consigned to price support, and the symbol for tobacco bought by private buyers. At the end of each sale day, the tobacco sale bills shall be sorted and filed in an orderly manner by sale days, numerical or alphabetical order, and basket tickets shall be filed in an orderly manner by sale dates or by numerical order. A copy of the executed Form MQ-80, Daily Warehouse Sales Summary, shall be furnished to the marketing recorder for the Kansas City Management Office (KCMO).

(5) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(6) *Report of farm scrap resulting from furnishing curing or stripping space for tobacco from farmers.* Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(7) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show resale and:

(i) For dealers, the name, address, and identification number of the dealer making each resale; and (ii) for the warehouse, the name, address, and identification number of the warehouse and either "floor sweepings" or "leaf account" tobacco.

(8) *Nonquota tobacco or quota tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or there is question as to what kind of quota tobacco is being offered, an inspection shall be obtained from the Agricultural Marketing Service (AMS) after the tobacco is weighed and in line for sale. Both the basket ticket and sale bill shall show the producer's name and address and the State and county code and farm number on which the tobacco was produced. If an AMS inspection shows that a basket or lot of tobacco is of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the basket ticket and sale bill shall be furnished to the State office at the end of the sale day.

(b) *Identification of producer sales of tobacco.* (1) *Tobacco sale bill.* The State and county codes and the farm serial number on the marketing card identifying the tobacco to be marketed at auction shall be recorded by the warehouseman on the tobacco sale bill at the time the tobacco is weighed in and the warehouseman shall retain the marketing card where tobacco is to be sold at auction (except where requested by owner or operator to effect a transfer of quota) only until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer. In any case where a producer's marketing card is found in the possession of warehouseman and no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for such card will be picked up by an ASCS representative for return to the producer. The warehouseman shall be responsible for the safekeeping and proper use of the marketing card during his retention of it. Each tobacco sale bill issued to cover an auction sale of tobacco from a farm for which a marketing card is issued bearing the notation "No Price Support" shall bear the same notation. A separate tobacco sale bill shall be executed to cover any tobacco which represents more than 110 percent of the effective farm marketing quota and the notation, "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale. The letters "NA" shall be shown on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and there shall be recorded on all such tobacco sale bills the farm serial number on the marketing card identifying the tobacco marketed at the time the tobacco is purchased at nonauction sale. A copy of the tobacco sale bill bearing the letters "NA" shall be furnished the producer for any lot or basket of such tobacco purchased by the warehouseman.

(2) *Basket ticket.* At the time tobacco is weighed for marketing, the warehouseman shall record the weight of the basket or sheet of tobacco on the tobacco sale bill and on the basket ticket. If the marketing card which is presented to identify the tobacco at weigh-in bears the notation "No Price Support," the same notation shall be entered by the warehouseman on the basket ticket for each basket or sheet of tobacco which is identified with the same marketing card.

(c) *Marketing card.* Each marketing of tobacco from a farm in the burley tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(1) *Auction sale.* A marketing card used to cover an auction sale shall show on the reverse side the poundage balance of the "110 percent of quota". At the time of weighin the tobacco sale bill shall show the poundage balance of 110 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of the penalty.

(2) *Nonauction sale to a warehouseman at the warehouse.* A marketing card used to cover a nonauction sale of tobacco to a warehouseman shall show on the reverse side the poundage balance of the "110 percent of quota". If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "110 percent of quota". The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(3) *Nonauction sale (county purchase) to a warehouseman.* Each purchase of tobacco from a producer from a burley producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless prior to purchase an AMS inspection certification is obtained showing that the number of pounds offered for sale is of a kind of tobacco not subject to quotas. A marketing card used to cover a nonauction sale (county purchase) at the farm shall show on the reverse side the poundage balance of the "110 percent of quota". Each warehouseman shall record each nonauction purchase of tobacco made by him on MQ-79 and on Form MQ-72-2, Report of Tobacco Nonauction Purchase. The data to be

reported on Form MQ-72-2 is set forth in § 726.94.

(4) *Tobacco under interim advance.* If tobacco is marketed from a farm, part or all of which is tobacco upon which an interim advance was made pursuant to Part 1421 of this chapter, the tobacco sale bill and the marketing card issued for the farm shall show in parenthesis the poundage balance of the tobacco upon which an interim advance was made, and the poundage balance of any other tobacco. As the interim advance is repaid on any tobacco the quantity shown on the marketing card as that upon which an advance was made shall be reduced proportionately.

(d) *Suspended sale record.* (1) Any tobacco sale bill covering a sale of tobacco for which a valid marketing card or dealer identification card was not presented shall be given to a marketing recorder who shall stamp such bills, "Suspended."

(2) When cleared, such suspended sale shall show "suspended—cleared" and date cleared. Such tobacco sale data shall be submitted to KCMO after the sale is cleared. If a suspended sale is not cleared from suspension within 7 days from date of sale or the last auction sale day for the warehouse for the season, whichever comes first, it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouseman.

(e) *Warehouseman's entries on other dealer's report.* Each warehouseman shall record, or have the dealer record, on MQ-79, the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. If any tobacco resold by the dealer is tobacco bought by him and carried over by him from a crop produced prior to the current crop, the entry on MQ-79 shall clearly show such fact.

(f) *Record and report of warehouseman's leaf account purchases and resales not on his floor.* Each warehouseman shall keep a record and make reports on MQ-79, Dealer's Report, showing:

(1) All nonauction purchases of tobacco, except nonauction purchases at his warehouse which are reported on MQ-80.

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) For all purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen, Form MQ-79 shall be prepared and a copy, including copies of Form MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week (at the end of each sales day during the auction season for such warehouse) in which such tobacco was purchased or resold: *Provided,* That, if tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance of all penalties shown by the entries on MQ-79 and Form MQ-72-2 to be due shall be forwarded to the State ASCS office with the original copy of MQ-79.

(g) *Daily warehouse sales summary.* Each warehouseman shall prepare at the end of each sale day a report on MQ-80, Daily Warehouse Sales Summary, showing for each sale day:

(1) For each manufacturer, buyer, order buyer, and tobacco cooperative (pool), pounds of tobacco purchased at auction (consigned in the case of the pool).

(2) The sum of the items for paragraph (g)(1) of this section.

(3) Resales at auction for each person listed under paragraph (g)(1) of this section.

(4) For each dealer subject to reporting purchases and resales on MQ-79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(5) The total pounds purchased at auction for the leaf account.

(6) The total pounds purchased at nonauction at the warehouse for the leaf account.

(7) The sum of the total pounds for paragraphs (g) (5) and (6) of this section.

(8)(i) The total leaf account resales and (ii) a separate account for total floor sweeping resales.

(9) The sum of the total purchases for paragraphs (g) (2), (4), and (7) of this section.

(10) The sum of the total resales for paragraphs (g) (3), (4), and (8) of this section.

(11) The totals of the purchases column total on the MQ-79 representing the nonauction purchases for the warehouse leaf account.

(12) The total of the resales column on Form MQ-79 which represents the non-auction sales, including floor sweepings nonauction sales, by the warehouse.

(13) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ-72-1.

(14) For each dealer, at time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(15) As to the information required to be entered on MQ-80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) The total number of Forms MQ-72-1 for the sale day and the sum of pounds sold and shown on Forms MQ-72-1, and (ii) the total number of suspended sale bills and the sum of such pounds sold.

(16) At the end of the season, each warehouseman shall: (i) Report on his final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, (ii) permit its inspection by a representative of ASCS, and (iii) provide for the weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained as provided in paragraph (g)(16)(iii) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(17) Before the next marketing season begins, carryover tobacco reported by the warehouseman as provided in paragraph (g)(16) of this section shall be reinspected by a representative of ASCS. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the warehouseman shall provide for the reweighing of such tobacco which shall be witnessed by an ASCS representative. The warehouseman shall furnish to ASCS at the time of weighing a certification as to the actual weight of such tobacco. If ASCS determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial certification, the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (g)(16) of this section shall be used for the purpose of determining the amount of penalty, if penalty is due. Penalty will be assessed, after the initial certification and reconciliation, when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover.

(h) *Report to county office of long weights and long baskets.* Each warehouseman shall report to the county ASCS office or marketing recorder long weights and long baskets of producer tobacco (first sales) for which the farmer has been paid.

(i) *Report on Form MQ-78, Tobacco Warehouse Organization.* Each warehouseman shall annually, prior to opening of auction markets, furnish ASCS an executed Form MQ-78 showing:

(1) Form of business organization.

(2) Names and addresses of warehouse officials and bookkeeper.

(3) Names and addresses of other warehouses in which the officials and bookkeeper have a financial interest.

(4) Name and address of custodian of warehouse records, including their location.

(j) *Payee to be shown on auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example, "John Doe or Bearer".

(k) *Damaged tobacco purchased for later resale.* Any warehouseman who plans to purchase tobacco in the form normally marketed by producers for resale that was damaged by such things as, but not limited to, fire and water shall prior to purchase report such plans to the State ASCS office issuing MQ-79, Dealer Record book. Such report shall be timely made so as to allow prior inspection for the marketable value of such damaged tobacco, and the weighing and removal of such tobacco to be witnessed by representatives of the State ASCS office. Any damaged tobacco purchased prior to reporting such plans to the State ASCS office and subsequent inspection by an ASCS representative shall be considered excess tobacco if later resold.

(l) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.* For each marketing year, the warehouseman shall maintain copies of the bill-out invoices to the purchaser by grades showing the pounds purchased and identification references to such basic warehouse records as basket ticket or sale bill. In lieu of this requirement, the warehouseman may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) baskets from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchaser.

(m) *Reporting of processed leaf account tobacco.* Any warehouseman who delivers tobacco to a firm for the purpose of redrying, processing, or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79, Dealer's Report:

(1) The date delivered; (2) name and address of the firm to which the tobacco was delivered and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 1, 37 FR 5688, Mar. 18, 1972; Amdt. 2, 37 FR 23246, Nov. 1, 1972; 38 FR 29594, Oct. 26, 1973; Amdt. 4, 39 FR 30824, Aug. 26, 1974; Amdt. 15, 45 FR 67297, Oct. 10, 1980; 48 FR 17525, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.94 Dealer's records and reports.

Each dealer, except as provided in § 726.95, shall keep the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided by this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number and the reporting dealer's identification number as well as the names of the warehouse and dealers involved in the transaction.

(a) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:

(A) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or

(B) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer of the tobacco, if different from the operator; or

(C) The seller if purchased as a nonauction purchase from a warehouseman or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.

(v) The pounds of tobacco purchased.

(vi) The gross purchase price.

(vii) The amount of penalty.

(viii) The amount deducted for the No Net Cost Tobacco Account.

(ix) The quantity of tobacco purchased from a prior crop and carried over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of:

(A) The warehouses through which the tobacco was sold, if sold at a warehouse auction, or

(B) The buyer if the tobacco was sold as a nonauction sale.

(ii) The date of sale.

(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(b) *Nonauction purchase.* Each purchase of tobacco from a burley tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless an AMS inspection certificate is obtained prior to purchase which shows that the tobacco being offered for sale is a kind of tobacco which is not subject to marketing quotas.

(1) After each nonauction purchase, the dealer shall enter a declining balance of "110 percent of quota" on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous "110 percent of quota" entry on the marketing card by the number of pounds of tobacco purchased. The date the tobacco was purchased also shall be entered on the marking card at the time each lot of tobacco is purchased.

(2) After each nonauction purchase, the dealer shall prepare a Form MQ-72-2 which shall set forth the following:

(i) The date of the purchase.

(ii) The registration number of the dealer.

(iii) The name and address of the person selling the tobacco.

(iv) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.

(v) The pounds of tobacco purchased.

(vi) The amount of penalty collected.

(vii) The method (estimating or weighing) of determining the pounds of tobacco marketed.

(viii) The signature of the seller and the date signed.

(3) The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Account as provided for in Part 1464 of this title. For nonauction purchases during the 1982-83 marketing year, the dealer shall deduct one cent per pound from the price paid to the producer for the tobacco, except for a purchase which is identified with a marketing card bearing the notation "No Price Support." For nonauction purchases which are made by the dealer from producers during the 1983-84 and subsequent marketing years, the dealer shall make a deduction in accordance with Part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the original "110 percent of quota" entry on the marketing card used to identify the tobacco was zero pounds. The amount of the deduction which is applicable to burley tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secreatary as the producer contribution to the No Net Cost Tobacco Account for each such marketing year.

(c) *Record and report of purchases and resales.* (1) Each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) A Form MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, shall be forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, shall be forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale date of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports together with executed copies of Form MQ-72-2 for all nonauction purchases shall be prepared and forwarded to the State ASCS office not later than the end of the calendar week which would include the first day of the local auction market where the resale takes place.

(3) The data to be entered on Form MQ-72-2 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (b)(2) of this section.

(4) At the end of the dealer's marketing operation, but not later than April 1, he shall for each kind of tobacco:

(i) Show the word "final" on his final report, MQ-79, for the season, (ii) report on such final MQ-79 for the season the quantity of tobacco on hand and its location, (iii) permit its inspection by a representative of ASCS, and (iv) provide for weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in paragraph (c)(4)(iv) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(5) Notwithstanding the provisions of paragraph (c)(4) of this section any dealer having tobacco transactions after March 1 shall make reports on MQ-79 at the end of each week, as provided in paragraph (c)(2) of this section.

(6) Before the next marketing season begins, carryover tobacco reported by the dealer as provided in paragraph (c)(4) of this section shall be reinspected by a representative of ASCS. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the dealer shall provide for the weighing of such tobacco which shall be witnessed by an ASCS representative. The dealer shall furnish to ASCS at the time of weighing a certification as to the actual weight of such tobacco. If ASCS determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial certification, the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (c)(4) of this section shall be used for the purpose of determining penalty, if penalty is due. Penalty shall be assessed, after the initial certification and reconciliation, when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover.

(7) In addition to Form MQ-79 and Form MQ-72-2, a Form MQ-79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a contribution to the No Net Cost Tobacco Account is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the time of forwarding the Form MQ-79 on which the purchase is recorded. A check, draft, or money order in the amount of the deduction recorded on Form MQ-79 (Supplemental) and

drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS office at the same time as Forms MQ-79 and MQ-79 (Supplemental).

(d) *Daily report to warehouseman for buyers corrections account.* Notwithstanding the provisions of § 726.95, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly invoiced to him by the warehouseman, shall furnish to the warehouseman on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouseman for that sale day.

(3) Such reports as required under paragraphs (d) (1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the purchasing dealer and the identification number of the warehouse where the purchase was made.

(e) *Damaged tobacco or tobacco purchased from processor or manufacturer.* (1) Damaged tobacco. Any dealer, warehouseman, or other person who plans to purchase tobacco that was damaged by fire, water, or any other cause shall prior to purchase report such plans to the State ASCS office issuing Form MQ-79, Dealer Record Book. Such report shall be timely made so that an ASCS representative can determine the marketable value of such damaged tobacco, and so that the weighing and removal of such tobacco can be witnessed by an ASCS representative. Any damaged tobacco purchased by the dealer before such plans are reported to the State ASCS office and before such tobacco is inspected by an ASCS representative shall be deemed excess tobacco and penalty at the full rate shall be due.

(2) Purchase from processor or manufacturer. Any dealer, warehouseman, or other person who plans to purchase tobacco from a processor or manufacturer shall prior to purchase, report such plans to the State ASCS office issuing Form MQ-79, Dealer Record Book. Such report shall be timely made so that an ASCS representative can determine the marketable value of the tobacco, and whether the tobacco is in the form normally marketed by producers. The weighing and removal of the tobacco shall be witnessed by an ASCS representative. Any tobacco purchased from processors or manufacturers before such plans are reported to the State ASCS office and before the tobacco is inspected by an ASCS representative shall be deemed to be excess tobacco and penalty at the full rate shall be due.

(3) Any dealer, warehouseman, or other person who purchases tobacco from processors or manufacturers which is determined by an ASCS representative to be in the form not normally marketed by producers shall, before such tobacco is disposed of or blended with other tobacco in the form normally marketed by producers, report such plans to the State ASCS office issuing Form MQ-79, Dealer Record Book. Such report shall be timely made so as to allow an ASCS representative to witness the disposition of or the blending of such tobacco. Any such tobacco purchased by a dealer, warehouseman, or other person and marketed, disposed of by any means, or blended with other tobacco before the State ASCS office has been timely notified, shall be deemed to have been substituted for excess tobacco, and penalty at the full rate shall be due on each pound of tobacco.

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79, Dealer's Report:

(1) The date delivered; (2) name and address of the firm to which the tobacco was delivered, and (3) the pounds of tobacco (green weight) de-

livered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be nonquota kind.* Any dealer who has displayed for AMS inspection prior to purchase at nonauction tobacco from a farm in a quota area that is represented to be tobacco of a nonquota kind shall:

(1) Execute a basket ticket which shall have imprinted thereon the type designation for the kind of tobacco normally marketed in the area which shows:

(i) The name and address of the producer, (ii) the pounds of tobacco in the basket, and (iii) the State and County code and farm number on which produced.

(2) Execute a sale bill which shows: (i) The name and address of the producer; (ii) the State and county code and farm number on which produced; (iii) the pounds in each basket and total pounds for the farm; and shall furnish a copy of each basket ticket and sale bill to the State office at the end of the sale day.

(h) *Reporting of tobacco in the form not normally marketed by producers.* Any dealer, warehouseman, or any other person who purchases tobacco from processors or manufacturers under conditions provided in § 726.94(e)(3) shall maintain on a separate Form MQ-79 a record of all such purchases and resales.

[36 FR 20651, Oct. 28, 1971, as amended by Amdt. 2, 37 FR 23247, Nov. 1, 1972; 38 FR 29595; Oct. 26, 1973, Amdt. 15, 45 FR 67297, Oct. 10, 1980; 48 FR 17525, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.95 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco ordinarily is sold by farmers, and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 726.94 except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of paragraph (d) of § 726.94. A dealer or buyer whose resales in the form ordinarily sold by farmers exceed 5 percent of its purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 726.94 (except for requirements which relate to nonauction purchases from producers and requirements of paragraph (d) of § 726.94).

(b) For the 1971-72 and subsequent marketing years, each dealer or buyer shall also make a report not later than April 1 of each year to the Director, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisitions of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (October 1 through September 30) which is not included in the April 1 report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show:

(1) For purchases at auction for each warehouse (i) USDA registration number (warehouse code), (ii) name and address of warehouse, (iii) gross pounds originally billed to the buyer, (iv) gross pounds for which payment was made, (v) gross pounds from the company correction account deducted for short baskets, short weights and returned baskets and, (vi) gross pounds from the company correction account added for long baskets and long weights.

(2) For purchases at nonauction (i) name and address of seller (dealer or farmer), (ii) seller's number (dealer's registration number or farm number, including State and county code), and (iii) pounds purchased.

[38 FR 29595, Oct. 26, 1973, as amended by Amdt. 8, 42 FR 2301, Jan. 11, 1977; Amdt. 12, 44 FR 15992, Mar. 16, 1979; 48 FR 17526, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.96 Records and reports of truckers, persons redrying, prizing, or stemming tobacco, and storage firms.

(a) Each trucker shall keep such records as will enable him to furnish the State ASCS office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the producer.

(2) The date of receipt of the tobacco.

(3) The number of pounds received.

(4) The location where received.

(5) The name and address of the person to whom it was delivered.

(b) Each firm engaged in the business of redrying, prizing, or stemming tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying, stemming, or prizing).

(5) The amount of any advance or loan made by him on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco following redrying, prizing, or stemming and number of hogsheads by classification (strips, stems, scrap or leaf).

(7) Person to whom delivered and pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program, and tobacco purchased by him at auction or for which he has previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 726.95, he is required to report only such tobacco received that does not belong to him.

(c) Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman, marketing agent or other person for whom the tobacco was received;

(2) The date of receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by him on the tobacco;

(5) The disposition of the tobacco; and

(6) The person to whom delivered and the pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by him at auction or for which he had previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 726.95 of this part, he is only required to report such tobacco received for storage that does not belong to him.

[36 FR 20651, Oct. 28, 1971, as amended at 38 FR 29595, Oct. 26, 1973]

§ 726.97 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, buyer, trucker, or as a person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 726.98 Failure to keep records and make reports or making false report or record.

(a) *Warehousemen and dealers*—(1) *Failure to keep records or make reports.* Under the provisions of section 373(a) of the Act, any warehouseman, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouseman, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed $5,000.

(2) *Failure to obtain producer's marketing card or dealer identification card.* The failure of (i) any dealer or warehouseman to obtain a producer's marketing card, MQ-76, to identify a sale of producer tobacco or (ii) any dealer or warehouseman who fails to obtain a dealer identification card, MQ-79-2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representations—warehousemen, dealers, and producers.* In addition to the monetary penalties prescribed in §§ 726.88 and 726.89 the penalties designated in paragraph (a)(1) of this section are in addition to penalties prescribed by other criminal statutes including United States Code, Title 18, section 1001, which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "110 percent of quota poundage" on marketing cards.

§ 726.99 Registration of warehousemen and dealers.

Any dealer or warehouseman dealing in tobacco shall be registered with U.S. Department of Agriculture. Such registration will be handled by the North Carolina State ASCS Office, Raleigh, N.C. Any person desiring to register as a dealer or warehouseman shall complete an "Application for Dealer Identification Card" and submit it to the State office. Warehousemen will be assigned a three-digit identification number and dealers will be assigned a four-digit identification number. Persons requesting it will be issued a dealer identification card, Form MQ-79-2.

§ 726.100 Duties of Kansas City ASCS Management Office.

The Kansas City ASCS Management Office (KCMO) has responsibility for processing certain data and making such reports as may be required by the Deputy Administrator.

[48 FR 40646, Sept. 8, 1983]

§ 726.101 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining the information required to be furnished, in any report, but not so furnished, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture upon written request by the State executive director, all such books, papers, records, basket tickets, tobacco sale bills, buyer adjustment invoices, accounts, cancelled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State executive director or the Director has reason to believe are relevant and are within the control of such person.

[Amdt. 4, 39 FR 30824, Aug. 26, 1974, as amended at 48 FR 17526, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.102 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director, or the Director. The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

§ 726.103 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, by all members of county and community committees, and all county office employee. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

[48 FR 17526, Apr. 22, 1983 and 48 FR 40646, Sept. 8, 1983]

RESTRICTION ON USE OF DDT, TDE, TOXAPHENE, OR ENDRIN

§ 726.105 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* Except with respect to the 1982 crop of burley tobacco for which the Burley Tobacco Growers Cooperative Association and the Burley Stabilization Corporation may process and store producer carryover tobacco and may act as the producer's marketing agent in marketing the producer's tobacco during the 1983-84 marketing year, this section shall not be applicable to 1979 and subsequent crops of burley tobacco. Any contract or agreement between the farm operator and the warehouseman (or marketing agent) or between the warehouseman (or marketing agent) and the processor or storage firm may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an agreement or contract, an act or verbal agreement, which alters the terms or conditions of the agreement or contract submitted for opinion, may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent, process, or store processed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds (green weight) delivered for processing shall be charged to the farm's marketing quota when marketed.

(d) *Marketing agent records and reports.* Each marketing agent shall keep such records that will enable him to fulfill the requirements of this section. In addition, the marketing agent shall keep all records relating to the receiving, processing, storage, and sale of producer tobacco delivered to him for processing.

(1) *Basket ticket and warehouse floor sheet or other delivery receipt.* The marketing agent shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the marketing agent shall prepare a warehouse floor sheet or other delivery receipt showing as a minimum the following information:

(i) Floor sheet or delivery receipt number;

(ii) Name and address of marketing agent;

(iii) Date tobacco is received;

(iv) Number of pounds in each basket and total pounds green weight received;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The marketing agent shall not receive any tobacco from a farm unless a current year marketing card or a document, which shows the State and county code and farm number, is furnished the weighman, certified by the executive director of the county office serving the farm.

(2) *Furnishing floor sheet or delivery receipt to the State office.* The marketing agent shall by the end of the calendar week in which the tobacco was received furnish to the State office of the State in which the marketing agent's business is located a copy of each floor sheet or delivery receipt for tobacco received during that calendar week. The marketing agent shall attach to the floor sheets or delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(3) *Furnishing floor sheet or delivery receipt and basket ticket to processor.* The marketing agent shall furnish two copies of each floor sheet or delivery receipt to the processor when the tobacco identified by such floor sheet or delivery receipt is delivered for processing. One or more copies of each basket ticket shall remain with the respective basket of tobacco.

(4) *Storage warehouse receipts.* The marketing agent is responsible for arranging for the storage and subsequent sale of the tobacco and shall not authorize release of the processed tobacco from storage until such tobacco is sold.

(5) *Sales report.* The marketing agent shall by the end of the calendar week in which processed producer tobacco is sold furnish a sales report to the State office of the State in which his business is located showing:

(i) Purchaser's name, address, and dealer number;

(ii) Date of purchase;

(iii) Date and delivery order number authorizing the storage firm to deliver the tobacco to the purchaser;

(iv) Sale report number (numbered beginning with number one for each crop year in sequence until all the tobacco for which the marketing agent is responsible is sold);

(v) For each hogshead the hogshead number, grade and original net (processed) weight;

(vi) Total original net processed weight of sale; and

(vii) Percentage (rounded to thousandths of a percent) pounds (original processed net weight) sold is of total net (original processed) weight of pooled tobacco processed.

(6) *Summary sheet.* The marketing agent shall, by the end of the week in which processed producer tobacco is sold, furnish to the State office of the State in which his business is located, a summary sheet for each farm having tobacco in the pool, showing:

(i) Date of sale;

(ii) Purchaser's name, address, and dealer number;

(iii) Processed pounds sold and percentage sale is of total pounds processed rounded to thousandths of a percent;

(iv) Sales report number on which included; and

(v) Total pounds (green weight) sold for subject farm as of that summary computed by multiplying the farm's green weight pounds delivered for processing by a factor determined by adding (*a*) the percent which the pounds (original weight) of stems sold in all sales is to the total pounds net weight processed, and (*b*) the percent which the pounds (original weight) of strips and scrap sold in all sales is to the net weight of the strips and scrap processed; and by subtracting from the sum so determined, the lesser of the percent determined in paragraph (d)(6)(v)(*a*) of this section, or the percent determined in paragraph (d)(6)(v)(*b*) of this section, multiplied by the percent which the original weight of the strips and scrap processed is to the total pounds net weight processed. If all processed tobacco (strips, stems and scrap) is not sold to the same buyer on the same date, the marketing agent shall prepare separate summary sheets for each.

(7) *Retention of records.* The marketing agent shall keep all records, including those specified in this paragraph, for three years following completion of processed tobacco sales for a crop year pool.

(e) *Processor records and reports.* Each processor of producer-owned tobacco, in addition to the records and reports required by § 726.96, shall keep such records that will enable him to satisfy the requirements of this section. In addition, the processor shall keep all records relating to the receiving, processing, storage and sale of producer carryover tobacco delivered to him for processing.

(1) *Furnishing copy of floor sheet or delivery receipt to States office.* The processor shall furnish a copy of each floor sheet or delivery receipt to the State office of the State in which his business is located by the end of each calendar week in which tobacco represented by such floor sheets or delivery receipts was delivered for processing. The processor shall attach a transmittal memorandum to the floor sheets showing:

(i) Transmittal number (numbered beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(2) *Production record.* The processor shall prepare a production record and furnish a copy to the marketing agent showing the:

(i) Hogshead number for strips, stems and scrap (the grade, gross, tare, and net weight shall be shown by the processor for each); and

(ii) Total pounds net processed weight for tobacco received for processing from such marketing agent.

(3) *Summary of tobacco processed.* The processor shall, by the end of the month in which producer tobacco is processed, furnish the marketing agent and State office of the State in which his business is located a summary showing the pounds green weight:

(i) Delivered for processing; and

(ii) Processed.

(4) *Retention of records.* The processor shall keep all records relating to processing producer tobacco, including those specified in this paragraph, for three years following the year in which such tobacco is processed.

(f) *Storage firm records and reports.* Any firm storing processed producer-owned tobacco, in addition to the records and reports required by § 726.96, shall:

(1) Issue to the marketing agent a blanket warehouse receipt with a detailed listing showing for each hogshead of processed producer tobacco stored, the hogshead number, grade, gross, tare and net weight; and

(2) Keep records relating to the storage transaction for three years following the year in which the last hogshead for a respective crop year is released by the marketing agent from storage.

(g) *Dealer buyer report.* Any dealer who purchases producer processed tobacco shall, by the end of the calendar week in which such tobacco was purchased, furnish the State office of the State in which his business is located by name of marketing agent for each hogshead purchased the: (1) Grade; (2) crop year, and (3) original net processed weight of each.

(h) *Processed pounds reflected on marketing card.* The county committee shall deduct the pounds green weight delivered for processing from 110 percent of the following year's marketing quota for the farm and reflect the balance on any marketing card issued for the farm.

(i) *Tobacco residue accumulated by marketing agent from producer tobacco delivered for processing.* Bits or parts of leaves which accumulate in loading, unloading, and display areas during the time that tobacco is delivered to the marketing agent, weighed, and loaded out to the processor, not to exceed .2 percent of the total pounds of tobacco delivered for processing, may be marketed by the marketing agent. Such tobacco shall be kept separate and apart from any other tobacco in the possession of the marketing agent. The marketing agent shall weigh such tobacco residue accumulation in the presence of an ASCS representative and furnish the ASCS representative at such time a certified statement as to the total weight of such tobacco residue. When tobacco residue accumulated by marketing agent from producer tobacco delivered for processing is marketed it shall, by the end of the calendar week in which marketed, be reported on a separate MQ-79, Dealers Report, to the State ASCS office of the State in which the business is located.

[38 FR 29596, Oct. 26, 1973, as amended by Amdt. 12, 44 FR 15992, Mar. 16, 1979; 48 FR 17527, Apr. 22, 1983; 48 FR 40646, Sept. 8, 1983]

§ 726.106 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.

(a) *General.* This section shall not apply to burley tobacco produced in the 1979 and subsequent crop years. Since carryover producer tobacco may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is stored is important. Any contract or agreement between the storage firm and the producer may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tabacco. Even though a favorable opinion may have been given on an agreement or contract, an act or verbal agreement which alters the terms or conditions of the agreement or contract submitted for opinion may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent or store unprocessed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds green weight delivered for marketing or storage shall be charged to the farm marketing quota when marketed.

(d) *Storage firm records and reports.* Any storage firm storing unprocessed producer-owned tobacco, in addition to the records and reports required by § 726.96 of this part, shall keep such records that will enable him to satisfy the requirements of this section. In addition the storage firm shall keep all records related to receiving and storage of producer tobacco.

(1) *Basket ticket and delivery rexeipt.* The storage firm shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the storage firm shall prepare a delivery receipt showing as a minimum the following information:

(i) Delivery receipt number;

(ii) Name and address of storage firm;

(iii) Number of pounds in each basket and total pounds received from each farm;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The storage firm shall not receive any tobacco from a farm unless a current year marketing card or a document which shows the State and county code and farm number, certified by the executive director of the county office serving the farm is furnished when the tobacco is delivered.

(2) *Furnishing delivery receipt to the State Office.* The storage firm shall, by the end of the calendar week in which tobacco was received, furnish to the State office of the State in which the business is located a copy of each delivery receipt for tobacco received during that calendar week. The storage firm shall attach to the delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of delivery receipts submitted in transmittal; and

(iv) Total pounds on delivery receipts submitted by the transmittal.

(3) *Identification of tobacco while stored.* Each basket of tobacco until removal from storage, shall be identified by a basket ticket attached to the re-

spective basket of tobacco showing the: (i) Farm operator's name and address; (ii) State and county code and farm number for the farm; and (iii) pounds of tobacco in each basket.

(4) *Storage firm reports.* The storage firm shall furnish to the State office of the State in which the business is located a report by storage location and crop year showing (i) the pounds of unprocessed tobacco, and (ii) the total pounds of unprocessed producer tobacco. Should any tobacco be moved from one storage location to another, an amended report shall be furnished by the end of the week in which such tobacco was moved. When tobacco is removed from storage, in addition to any other requirements of this subpart, the storage firm, by the end of the week in which such tobacco was removed from storage, shall furnish the State office a report showing by farm from which received:

(*a*) The pounds removed from storage;

(*b*) The name and address of the person receiving such tobacco; and

(*c*) Date on which removed.

(5) *Retention of records.* All records relating to the storage of producer tobacco including those required by this section shall be retained by the storage firm for three years following the removal of such tobacco for a respective crop year from storage.

[38 FR 29597, Oct. 26, 1973, as amended by Amdt. 12, 44 FR 15992, Mar. 16, 1979]

§ 726.107 Warehouses authorized to retain producer marketing cards between sales.

Notwithstanding any other provision of this part, to facilitate the scheduling of farmer's tobacco to the warehouse, marketing cards with the permission of the producer may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(a) *Warehouses eligible to retain producer marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by ASCS a written request with the State committee (or county committee if designated by the State committee).

(2) Agree to be responsible to ASCS for an amount of money equal to the amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Overmarketing resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Tobacco marketed at the warehouse in excess of 110 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

(i) Name of farm operator;

(ii) Serial number of farm;

(iii) Date marketing card obtained from producer; and

(iv) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within seven (7) days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by ASCS for failure to comply with provisions of this agreement.

(b) *Penalties considered to be the responsibility of warehouseman.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State committee (or county committee if designated by the State committee) for authorization to retain producers' marketing cards at the warehouse, with grower permission, shall be responsible to ASCS for an amount of money equal to the amount that may be assessed against producer as marketing quota penalties: *Provided*, The marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on the producer's marketing card. Except that no warehouse operator shall be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with paragraph (e) of § 726.89.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(4) Tobacco marketed at the warehouse in excess of 110 percent of quota as shown on the producer's marketing card.

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Subpart—Acreage Allotments, Marketing Quotas, and Poundage Quotas for 1978 Through 1981 Crops of Peanuts

AUTHORITY: Secs. 301, 358, 358a, 359, 361-368, 372, 373, 375, 377, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended; 7 U.S.C. 1301, 1358, 1358a, 1359, 1361-1368, 1372, 1373, 1375, 1377; and secs. 801, 802, 803, 804, 805, 806, 91 Stat. 944 (7 U.S.C. 1358), unless otherwise noted.

SOURCE: 43 FR 28987, July 5, 1978. Sections 729.48-729.72 appear at 44 FR 25404, May 1, 1979, unless otherwise noted.

§ 729.1 Basis and purpose.

(a) The regulations contained in this subpart are issued in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 *et seq.*) and are applicable to peanuts for the 1978 through 1981 crops. They govern the establishment of farm acreage allotments and marketing quotas, farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, and the keeping of records, and making reports incident thereto.

(b) The allotment and marketing quota regulations for peanuts of the 1972 and subsequent crops (37 FR 2645 and 37 FR 3629, as amended) are superseded but remain effective with respect to the 1972 through 1977 crops of peanuts.

[48 FR 9219, Mar. 4, 1983 and 49 FR 14284, Apr. 10, 1984]

§ 729.2 Extent of calculations and rule of fractions.

Round computations according to provisions of Part 793 of this chapter. Express:

(a) Acreage and allotment in acres and tenths of acres.

(b) The percentage of excess peanuts for a farm in percent and tenths of a percent.

(c) A converted penalty rate in cents and hundredths of a cent per pound.

(d) Penalty or damages in dollars and cents.

(e) The quantity of peanuts marketed, a farm marketing quota, a farm poundage quota, a farm yield and an actual yield per acre in whole pounds.

(f) All factors as a four place decimal fraction.

§ 729.3 Definitions.

The definitions in and provisions of Parts 718, 719, and 720 of this chapter are hereby incorporated in these regulations unless the context or subject matter or the provisions of these regulations requires otherwise. References to other parts of this chapter or title include any amendments to the referenced parts. Unless the context or subject matter requires otherwise, the following words and phrases, as used in this subpart and in all related instructions and forms shall mean:

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(b) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(c) *Areas.* (1) The southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(d) *Base period.* The 3 calendar years immediately preceding the year for which farm allotments are being established.

(e) *Buyer.* A person who:

(1) Buys or otherwise acquires peanuts in any form;

(2) Markets, as a commission merchant, broker, or cooperative, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(3) Receives peanuts as collateral for or in settlement of a price support loan.

(f) *Considered planted acreages.* Acreages determined for the current year for use in computing a future peanut allotment. Considered planted acreage for a farm will be the sum of the acreage (limited to the farm acreage allotment less the planted acreage):

(1) Not planted because of natural disaster,

(2) Computed for pounds of quota transferred from the farm,

(3) In eminent domain pool,

(4) Preserved under provisions of Part 719 of this chapter, and

(5) Determined by subtracting the planted credit from the farm acreage allotment provided that the quantity of peanuts produced and marketed from the farm in the current marketing year was equal to or greater than 75 percent of the farm poundage quota.

(g) *Director.* The Director, or Acting Director, Production Adjustment Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(h) *Effective farm acreage allotment.* The allotment determined under § 729.12.

(i) *Effective farm poundage quota.* The quota determined under § 729.12 of this chapter.

(j) *Excess acreage.* The amount by which the final acreage of peanuts exceeds the effective farm acreage allotment after approval of any transfer agreement (ASCS-375) filed on or before the earlier of:

(1) The date the farm operator files a report of the planted acreage of peanuts on the farm, or (2) the date set by the State committee, except that the excess acreage will not be considered as excess acreage when:

(i) The final acreage is 1 acre or less, (ii) no acreage and quota has been transferred from the farm or released to the county committee for reapportionment, and (iii) no producer who shares in the peanuts also shares in peanuts on any other farm.

(k) *Excess peanuts.* (1) The quantity of quota peanuts marketed or considered marketed in the current marketing year in excess of the effective farm poundage quota, or (2) peanuts produced on excess acreage.

(l) *Farm acreage allotment*—(1) *Old farm.* The preliminary farm acreage allotment for the current year multiplied by the current year State allotment factor plus any permanent adjustments.

(2) *New farm.* The allotment established according to § 729.17 by the county committee with the concurrence of the State committee.

(m) *Farm base production poundage.* The pounds determined by multiplying the farm acreage allotment by the farm yield and hereinafter referred to as the preliminary farm poundage quota.

(n) *Farm marketing quota.* The actual production of peanuts on the effective farm acreage allotment.

(o) *Farm poundage quota.* The pounds determined by multiplying the preliminary farm poundage quota by the national quota factor.

(p) *Farm yield.* The farm yield determined as provided in § 729.14.

(q) *Farm peanut history acreage.* The acreage determined under § 729.7 which is considered as devoted to peanuts on a farm for purposes of establishing future allotments.

(r) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the State in which picked or threshed peanuts are customarily marketed by producers.

(s) *False identification.* False identification is:

(1) Identifying or permitting the identifying of peanuts at time of marketing as having been produced on a farm other than the farm of actual production; or

(2) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm; or

(3) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm.

(t) *Final acreage.* The acreage on the farm from which peanuts are picked or threshed as determined and adjusted under Part 718 of this chapter.

(u) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(v) *Handler.* Any person or firm who acquires peanuts through a business of buying, shelling, or drying peanuts.

(w) *Inspector.* A Federal or Federal State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(x) *Market.* To dispose of peanuts, including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "Marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used. The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to him by anyone. Any lot of farmers stock peanuts will be considered as marketed when delivered by the producer to the buyer pursuant to an oral or written sales agreement, Peanuts which are delivered by the producer as collateral for or in settlement of a price support loan will be considered as marketed at the time of delivery. Any peanuts retained on the farm for seed or other use shall be considered marketings of quota peanuts.

(y) *Marketing year.* For each crop of peanuts, the period beginning August 1 of the current year and ending July 31 of the following year.

(z) *National poundage quota.* The pounds of peanuts determined and announced by the Secretary for the marketing year as the quantity needed to meet total estimated requirements for domestic edible use and a reasonable carryover and which shall not be less than the following amounts: 1978, 1,680,000 tons; 1979, 1,596,000 tons; 1980, 1,516,000 tons; and 1981, 1,440,000 tons.

(aa) *National quota factor.* The factor determined by dividing the national poundage quota for the marketing year by the total of (1) the preliminary poundage quotas for all farms having a peanut allotment and (2) the product of the total unused reserve acreage in all States times the national average farm yield.

(bb) *New farm.* A farm for which a peanut allotment and farm poundage quota is established in the current year and for which there is no peanut history acreage in the base period.

(cc) *Old farm.* A farm for which there is peanut history acreage in one or more years of the base period.

(dd) *Planted acreage.* The final acreage of peanuts on a farm plus the acreage of peanuts receiving failed acreage credit under the provisions of Part 718 of this chapter.

(ee) *Peanuts.* All peanuts produced, excluding any peanuts which were not dug or were not picked or threshed before or after marketing from the farm, as established by the producer or otherwise in accordance with this subpart, and excluding any peanuts marketed by the producer before drying or removal of moisture from such peanuts by natural or artificial means for consumption exclusively as boiled peanuts (referred to as "green peanuts"). If a lot of farmers stock peanuts has been inspected by the Federal State Inspection Service at the time of marketing, the quantity in the lot shall be the gross weight thereof less foreign material and excess moisture (moisture in excess of 7 percent in the Southeastern and Southwestern areas and 8 percent in the Virginia-Carolina area). If the lot of peanuts is not inspected by the Federal-State Inspection Service the quantity in the lot shall be the gross weight thereof. If shelled peanuts are marketed by a producer, the quantity in the lot (farmers stock basis) shall be determined by multiplying the poundage of shelled peanuts by 1.5.

(ff) *Preliminary farm acreage allotment.* The acreage allotment determined under § 729.8.

(gg) *Preliminary farm poundage quota.* The same as the farm base production poundage.

(hh) *Productivity pool.* A State and county pool into which are placed increases or decreases in acreage resulting from permanent transfers.

(ii) *Quota peanuts.* Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. This includes all peanuts (except green peanuts) which are dug on a farm except peanuts (1) which are placed under loan at the additional support rate as provided in Part 1446 of this title and not redeemed by the producer; or (2) which are marketed under contract between a handler and a producer as provided in Part 1446 of this title for export and/or crushing.

(jj) *Seed sheller.* A person who in the course of his usual business operations shells peanuts for producers for use as seed for the subsequent year's crop.

(kk) *State allotment factor.* The factor determined by dividing the State's share of the national acreage allotment, less the acreage reserved under the provisions of this part, by the sum of the preliminary allotments on all farms in the State plus the acreage in the State productivity pool.

(ll) *Undermarketings*—(1) *Actual undermarketings.* The pounds by which the effective farm poundage quota (minus any undermarketings from the preceding year which were added to such quota) exceeds the larger of (i) the total production of segregation 1 peanuts on the farm or (ii) the total amount of quota peanuts which are marketed from the farm.

(2) *Effective undermarketings.* The amount by which the farm poundage quota on an eligible farm shall be increased in the current year for undermarketings in the preceding year, and which shall be determined as follows:

(i) The farm shall be an eligible farm if the planted acreage of peanuts in the preceding year was equal to or greater than the product of the national quota factor times the farm acreage allotment in effect after approval of any transfer agreement which was filed on or before the date set by the State committee.

(ii) If 10 percent of the national poundage quota for the marketing year during which the actual undermarketings occurred is equal to or greater than the actual undermarketings on all eligible farms, the increase shall be the same as the actual undermarketings.

(iii) If the conditions in paragraph (ll)(2)(ii) of this section are not applicable the increase will be apportioned to each eligible farm in such manner that the increase will not be less than the smaller of the actual undermarketings or 10 percent of the effective farm poundage quota, will not be more than the actual undermarketings, and will be apportioned so as to cause the total of the increases on all eligible farms to equal 10 percent of the national poundage quota for the marketing year during which the actual undermarketings occurred.

(mm) *Yield per acre or actual yield.* The actual yield per acre for the farm obtained by dividing the total production of peanuts for the farm by the final acreage.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377, 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658, 55 Stat. 90, as amended, 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a); secs. 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

[43 FR 28987, July 5, 1978, as amended at 44 FR 25404, May 1, 1979; Amdt. 2, 45 FR 6082, Jan. 25, 1980; Amdt. 3, 45 FR 34862, May 23, 1980]

§ 729.4 Types of peanuts.

The generally known types of peanuts have identifying characteristics as follows:

(a) *Runner type peanuts.* Commonly known as African Runner, Alabama Runner, Georgia Runner, Carolina Runner or Wilmington Runner, Dixie Runner, or Runner; produced principally in the Southeastern peanut-producing area of the United States and identified by the following characteristics: Typically two-seeded pods which are practically cylindrical, medium sized, stem end round and the other pointed with a slight keel having shells fairly thick and strong, with shallow veining and corrugation; seeds crowded in pod with adjacent ends sharply shouldered.

(b) *Spanish type peanuts.* Commonly known as White Spanish, Small Spanish, Medium-Small Spanish, or Spanish; produced principally in the Southeastern and Southwestern peanut-producing areas of the United States and identified by the following general characteristics: Typically two-seeded pods which are small, with both ends rounded, the end opposite the stem having an inconspicuous point or keel, and the waist slender; shells very thin, with veining and corrugation but not deep, and seed globular to oval and practically smooth.

(c) *Valencia type peanuts.* Commonly known as New Mexico Valencia, Tennessee Valencia, Tennessee White, Tennessee Red, or Valencia; produced principally in Tennessee and New Mexico and identified by the following general characteristics: Typically three or four-seeded, and sometimes five-seeded pods which are long and slender, with the end opposite the stem having a definite point or keel with conspicuous veining and corrugation, and seeds globular to oval.

(d) *Virginia type peanuts.* Commonly known as Virginia Runner, Virginia Bunch, North Carolina Runner, North Carolina Bunch, Jumbo, or Virginia; produced principally in North Carolina, Virginia, northeastern South Carolina, and Tennessee, and identified by the following general characteristics: Typically two-seeded pods which are of an average size larger than any other type, pods are roughly cylindrical, with veining and corrugation deep, and seeds cylindrical with pointed ends, length two or three times diameter, and practically smooth.

§ 729.5 Supervisory authority of State committee.

The State committee shall take any action required to be taken by the county committee which the county committee fails to take and the State committee shall correct or require the county committee to correct any action taken by the committee which is not according to this subpart. The State committee shall also require the county committee to withhold taking any action which is not according to this subpart.

§ 729.6 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 729.7 Determination of farm peanut history acreage.

(a) *Maximum history acreage.* The farm peanut history acreage for any year shall not exceed the farm peanut allotment for such year.

(b) *Farm acreage allotment fully preserved.* The farm peanut history acreage for the current year is the same as the farm acreage allotment for the current year if in the current year or either of the two preceding years, the planted and considered planted acreage of peanuts was as much as 75 percent of the results obtained after subtracting the acreage temporarily released and the acreage reduced for violation from the:

(1) Farm acreage allotment for 1976 and 1977 years; or

(2) Farm acreage allotment times the national quota factor for the 1978 through 1981 crop years.

(c) *Computation of history acreage.* If the full allotment is not preserved as peanut history acreage under paragraph (b) of this section, the farm peanut history acreage for the current year shall be the planted and considered planted acreage for the current year plus any current year acreage reduction for violation and for acreage temporarily released.

(d) *Reduction of previously determined history.* Notwithstanding any other provision of this subpart, the peanut history acreage for each year of the base period shall be zero unless in one or more years of the base period the farm could have received peanut history acreage other than from acreage released to the county committee or acreage reduction(s) for the violation of marketing quotas.

[43 FR 28987, July 5, 1978, as amended at 48 FR 9219, Mar. 4, 1983; 49 FR 14284, Apr. 10, 1984]

§ 729.8 Determination of preliminary farm acreage allotment.

The county committee shall not establish a preliminary farm acreage allotment for a farm if all of the cropland on the farm has been retired from agricultural production and the cropland was not and could not have been acquired under the right of eminent domain. In all other cases, the county committee shall establish a preliminary farm acreage allotment which shall be:

(a) The average of the preceding year's farm acreage allotment and farm peanut history acreage if the farm history acreage is less than 75 percent of the farm acreage allotment.

(b) The preceding year's farm acreage allotment if the preceding year's farm peanut history acreage is equal to or greater than 75 percent of the preceding year's farm acreage allotment.

§ 729.9 Reserves for corrections, missed farms, inequities and for new farms.

(a) The State committee shall establish a reserve acreage from the State allotment for correcting errors in farm allotments, for establishing allotments for missed farms, and for adjusting inequities. The reserve shall not exceed 2 percent of the State allotment and shall be used to the extent available to correct errors and/or establish allotments for missed farms before adjusting inequities.

(b) In addition to the reserve in paragraph (a) of this section the State committee shall establish a State reserve for new farms based on estimated requirements but not to exceed 1 percent of the State allotment.

(c) Within the limitations provided in paragraph (a) of this section the State committee may make acreage from the State reserve established under this section available to the county committees for adjusting inequities in farm acreage allotments. To the extent that reserve acreage is available, the county committee may adjust an inequity in the farm acreage allotment if it determines with approval of a representative of the State committee that the adjustment is necessary to establish an allotment for the farm which is equitable when compared with the allotment on other similar old farms in the locality. Upward adjustments shall be made on the basis of the farm peanut history acreage for the base period; labor and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts.

§ 729.10 Computation of farm acreage allotments for old farms.

The farm acreage allotment for each old farm for the current year shall be computed by multiplying the preliminary allotment for such farm by the State allotment factor.

§ 729.11 Additional acreage allotment for farms producing types of peanuts in short supply.

(a) Any additional acreage allotment apportioned to any State producing peanuts of a type or types determined to be in short supply for the current year, less a reserve for the correction of errors, shall be apportioned among farms on which peanuts of such type or types were produced in any of the 3 years of the base period. The reserve for the correction of errors shall be determined by the State committee on the basis of experience in past allotment programs and its knowledge as to the reliability of data used in apportioning the additional acreage to farms, and shall not exceed 1 percent of the additional acreage apportioned to the State. For each farm eligible to share in the additional acreage apportioned to the State, the county committee shall determine that part of the total farm peanut history acreages for the base period that was devoted to, or considered devoted to, the respective type of peanuts determined to be in short supply. A factor shall be computed by dividing the additional acreage apportioned to the State for the respective type (minus the reserve for the correction of errors) by the State total of acreage devoted to the respective type. The factor(s) shall be rounded to four decimal places. The amount of the increase for each farm shall be computed by multiplying the respective factor by the total acreage determined for each respective type for each eligible farm. The poundage quota shall be increased in the same proportion that the allotment is increased.

(b) The increase in acreage allotment under this section shall not be considered in establishing future State, county, or farm acreage allotments.

§ 729.12 Determination of effective farm acreage allotment and effective farm poundage quota.

The effective farm acreage allotment and the effective farm poundage quota shall be the farm acreage allotment and farm poundage quota plus or minus any adjustments made according to this part as a result of transfer, release, reapportionment, undermarketing, increase in allotment for types of peanuts in short supply, and for a violation reduction.

§ 729.13 Increase in farm poundage quota for undermarketings.

The farm poundage shall be increased by the amount of the effective undermarketings. An increase in the farm poundage quota as a result of undermarketings shall not result in an increase in the farm acreage allotment.

§ 729.14 Determination of farm yields.

A farm yield shall be determined for each farm for which a farm acreage allotment has been established.

(a) For each farm (except a farm resulting from a combination which became effective during any of the years 1974 through 1977) on which peanuts were produced during 3 or more of the years 1973-77 the farm yield shall be the average of the three highest actual yields per acre on the farm during the crop years 1973 through 1977.

(b) If peanuts were not produced on the farm (or identifiable tract on a farm which resulted from a combination during the period 1974-77) in at least 3 years of the 5-year period 1973-77, the county committee shall appraise a farm yield (or tract yield, if applicable) based on the farm yield on similar farms and in accordance with instructions issued by the Deputy Administrator.

(c) For each farm which resulted from a combination which became effective during any of the year 1974 through 1977 a tract yield shall be determined for each identifiable tract which was included in the combination farm at the time of the combination. The tract yield shall be established in the same manner as the farm yield for a farm which was not involved in a combination. The farm yield for the farm shall be determined by dividing the sum of the products of the tract yields times the allotment attributable to each respective tract by the farm acreage allotment for the farm.

(d) If there was a substantial change in the operation of the farm (or identifiable tract) during the period 1973-77 (including a change in the farm operator, irrigation practice, or other similar condition) the yield (farm or tract) may be adjusted (upward or downward) based on similar farms and in accordance with instructions issued by the Deputy Administrator.

§ 729.15 Determination of farm yield on a farm reconstituted after farm yields have been established.

For reconstitutions which are effective after farm yields have been established the farm yield shall be determined as follows:

(a) *Combinations*—(1) *Allotment farms.* The farm yield shall be the weighted average of the tract yields for each identifiable tract in the combined farm, based on the peanut allotment attributable to each respective tract and the tract yield for that tract.

(2) *Allotment and non-allotment farms.* A combined farm shall assume the farm yield of the tract with an established allotment if placed in combination with a non-allotment tract even though a farm yield previously has been established for such tract.

(3) *Non-allotment farms.* The farm yield for combined non-allotment tracts shall be appraised under § 729.14 by the county committee even though a farm yield previously has been established for such tracts.

(b) *Divisions*—(1) *No identifiable tracts having tract yield established.* The farm yield shall be the same for each tract as the farm yield for the parent farm.

(2) *Identifiable tracts with tract yield established.* The farm yield shall be the same as the tract yield estab-

lished for the tract which is divided from the parent farm.

(3) *Division of an identifiable tract having a tract yield established.* The farm yield shall be the same as the tract yield for the tract which is being divided.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377; 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658; 55 Stat. 90, as amended; 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a, 805, 806); 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

[43 FR 28987, July 5, 1978, as amended by Amdt. 3, 45 FR 34862, May 23, 1980]

§ 729.16 Determination of preliminary farm poundage quota and farm poundage quota.

For each farm for which a farm acreage allotment has been determined the county committee shall determine a preliminary farm poundage quota and farm poundage quota. The preliminary farm poundage quota shall be determined by multiplying the farm acreage allotment by the farm yield as determined under § 729.14. The farm poundage quota shall be determined by multiplying the preliminary farm poundage quota by the national quota factor.

§ 729.17 New farm allotment.

(a) *Conditions of eligibility for new farm allotment.* A new farm peanut allotment may be established if each of the following conditions are met:

(1) *Written application.* A written application for a new farm allotment must be filed by the farm operator at the office of the county committee where the farm is administratively located. The application must be filed on or before February 15 of the current crop year.

(2) *Operator requirements.* (i) The operator shall be the sole owner of the entire farm except that the operator's spouse may be an owner, or joint owner with the operator of all or part of the farm.

(ii) Neither the farm operator nor the operator's spouse, if the spouse has ownership interest in the farm for which the application is filed, shall own, have any ownership interest in, or operate any other farm in the United States for which a peanut allotment is established for the current year.

(iii) The operator must own or have readily available adequate equipment and any other facilities of production (including irrigation water in irrigation areas) necessary to the production of peanuts on the farm.

(iv) Except as provided in paragraph (c) of this section, the operator and the operator's spouse must satisfy the county committee that they expect to obtain during the current year more than 50 percent of their income from the production of agricultural commodities or products. If the operator is a partnership, each partner must expect to obtain more than 50 percent of his/her current year income from farming. If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(A) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock, and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s) excluding the estimated return from the production of the requested new farm allotment.

(B) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(C) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided the county committee determines with concurrence of a State committee representative, that without the new farm allotment the operator and the operator's spouse jointly will not be able to provide a reasonable standard of living for their family.

(v) The operator must have had experience in producing, harvesting, and marketing peanuts. The experience must have been as a sharecropper, tenant, or farm operator (bona fide peanut production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least 2 of the 5 years immediately preceding the current year. If the operator was in the armed services during the 5-year period, the period shall be extended 1 year for each year of military service during the 5-year period. The experience must have been on a farm having an effective peanut allotment during each year for which experience is claimed.

(3) *Farm requirements.* The farm:

(i) Must include the type of soil that is suitable for peanut production.

(ii) May not include land from which the entire peanut allotment was permanently transferred by sale or owner within the past five crop years.

(iii) May not include land from which the entire peanut allotment was permanently released within the past three crop years.

(iv) May not include a tract of land which resulted from a division, which became effective during the past three crop years, of a parent farm peanut allotment by the owner designation method pursuant to Part 719 of this chapter.

(v) May not include land which was returned to agricultural production within a period of 3 years from the date the former owner was displaced if the entire peanut allotment for the farm of which the land was a part was pooled pursuant to part 719 of this chapter.

(b) *Amount of new farm allotments.* The farm allotment for a new farm shall be that acreage which the county committee, with the approval of a representative of the State committee, determines is fair and reasonable for the farm, taking into consideration the peanut-growing experience of the producer(s) on the farm; land, labor and equipment available for the production of peanuts on the farm; crop rotation practices; and soil and other physical factors affecting the production of peanuts. The farm allotment established for a new farm shall not exceed the smaller of 10 acres or 25 percent of the cropland on the farm without prior approval of the Deputy Administrator.

(c) *Reduction of new farm allotment.* The allotment determined under this subpart for a new farm shall be reduced to the sum of the peanut acreage planted and the acreage prevented from being planted to peanuts due to a natural disaster on the farm when it is found that the sum of the planted and prevented planted acreage is less than 75 percent of the results obtained by multiplying the new farm allotment times the national quota factor.

(d) *Cancellation of new farm allotment.* (1) Any new farm allotment established and any history acreage credit shall be void as of the date the new farm allotment was issued if the State committee determines that the applicant knowingly furnished false, incomplete or inaccurate information to obtain the allotment.

(2) Any new farm allotment established, where incomplete or inaccurate information was unknowingly furnished by the applicant and so determined by the county committee shall be void for the next crop year. However, the cancellation shall not be applicable to the current year or the prior years.

(e) *Farm poundage quota for a new farm.* The county committee shall determine a farm poundage quota for each new farm for which an allotment has been established as follows:

(1) A farm yield determined under § 729.14 shall be multiplied by the established new farm allotment to obtain the preliminary farm poundage quota.

(2) The preliminary farm poundage quota shall be multiplied by the national quota factor to obtain the farm poundage quota for the new farm.

§ 729.23 Approval of allotment and farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm acreage allotment, farm yield, preliminary farm poundage quota and farm poundage quota shall be determined under the supervision of and approved by the county committee of the county in which the farm is administratively located, subject to concurrence of the

State committee or a representative of the State committee. The initial notice of an acreage allotment and poundage quota shall not be mailed to a farm operator until the allotment and poundage quota has been approved. A revised notice may be mailed without prior approval in any case resulting from:

(1) A farm reconstitution that does not require allocation of additional acreage or poundage quota; (2) release and reapportionment of poundage quota; (3) an increase of allotment for type; (4) lease and transfer of poundage quota; or (5) allotment reduction due solely to failure to return marketing card(s) or otherwise furnish a satisfactory report of disposition of peanuts.

(b) *Notice to farm operator.* (1) As soon as possible after the farm acreage allotment and poundage quota is approved, an official notice of the effective farm acreage allotment and the effective farm poundage quota shall be mailed to the farm operator.

(2) If application for a new farm peanut allotment is disapproved by the county committee because the eligibility requirements for a new farm allotment have not been met, the county committee shall mail to the farm operator a notice of "None" as the farm allotment.

(3) If an old peanut farm loses eligibility for an old farm peanut allotment for the current year, the county committee shall mail to the farm operator a notice of "None" as the farm allotment and poundage quota. The notice must show the reason why a farm allotment and poundage quota was not established for the farm.

(4) A revised notice of farm allotment and poundage quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed or the county committee takes an action (approves lease, reconstitution, etc.) which requires a revision of the previously determined allotment and poundage quota.

(5) The notice to the operator shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established.

(6) Insofar as possible and practical, all notices shall be mailed in time to be received prior to the date of any peanut marketing quota referendum.

(7) A copy of each notice or a printout summary of the data from each notice shall be displayed for 30 days in the county office and shall thereafter remain available for public inspection.

(8) Upon request, a certified copy of the notice shall be furnished, without charge to any person who has an interest in peanuts on the farm as an operator, landlord, tenant, or sharecropper in the year for which the notice is issued.

§ 729.24 Erroneous notice of allotment and poundage quota.

(a) *Allotment erroneous notice.* If the official notice of the farm acreage allotment and poundage quota issued for any farm erroneously stated an acreage allotment larger than the correct effective farm acreage allotment, the acreage allotment shown on the erroneous notice shall be used as the peanut acreage allotment for the farm for the current marketing year only, if the county committee determines (with the approval of the State Executive Director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) the operator, relying upon such notice and acting in good faith (i) materially changes his position to enable him to produce the allotment crop (for example, obligated expenditures of funds for land preparation, additional equipment and labor) and (ii) has planted an acreage of peanuts in excess of the correct effective farm acreage allotment.

(b) *Poundage quota erroneous notice.* If the official notice of acreage allotment and poundage quota issued for a farm erroneously stated a poundage quota larger than the correct effective farm poundage quota, the poundage quota shown on the erroneous notice shall be used as the poundage quota and the basis for marketing penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State Executive Director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator was not notified of the correct farm poundage quota prior to marketing peanuts as quota peanuts in excess of the correct farm poundage quota. Undermarketings for farms for which the erroneous notice of poundage quota is applied shall be determined on the basis of the correct effective farm poundage quota for the farm.

(c) *Notice of excess and penalty.* The county committee shall mail to the farm operator a written notice of excess acreage for any farm with excess peanut acreage. Such notice shall contain a brief statement of the procedure whereby application for review of the marketing quota may be made under section 363 of the Act. The notice shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeemen or an employee of the county office. A copy of each notice containing a notation thereon of the date of mailing the notice to the operator of the farm shall be kept among the permanent records of the county committee, and upon request, a copy, certified as true and correct shall be furnished without charge to any person who as operator, landlord, tenant, or sharecropper, is interested in the peanuts produced in the current year on the farm for which the notice is given.

§ 729.25 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and farm poundage quota established for his new farm may, within 15 days after mailing of the official notice of the farm acreage allotment and poundage quota, file application in writing with the county ASCS office to have such allotment and quota reviewed by a review committee. The review committee has the duty and responsibility to establish the correct, fair, and reasonable acreage allotment, marketing quota, and poundage quota in accordance with law and without regard to reserve acreage available or other limitations upon the county committee when the allotment, marketing quota, and/or poundage quota being reviewed was established. The procedure governing the review of the farm acreage allotments and marketing quotas is contained in Part 711 of this chapter, which is available at the county ASCS office.

TRANSFERS AND RELEASE AND REAPPORTIONMENT

§ 729.30 Terms and conditions applicable to transfers under Section 358a of the Act.

(a) *Persons eligible to file a record of transfer*—(1) *Sale or lease.* The owner and operator of any farm having an old farm peanut allotment and poundage quota in the current year is eligible to file a record of transfer for sale or lease of all or any part of the farm poundage quota to any other owner or operator of a farm in the same county. The receiving farm need not be an old farm. If the owner(s) and operator of the farm from from which the transfer by sale or lease is to be made are different persons. Each shall execute the record of transfer; however, only the owner(s) or operator of the receiving farm is required to sign the transfer. A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county office mails Form ASCS-375 for the required signature. In the case of a transfer by sale, such request must be accompanied by a statement signed by all parties to the transaction confirming that the sale has been made.

(2) *By owner.* The owner of any farm having an old farm peanut allotment and poundage quota in the current year is eligible to file a record of transfer to transfer the farm poundage quota from the farm to another farm in the same county owned or

controlled by the owner. The county committee may approve a temporary transfer to a farm controlled but not owned by the applicant only if the applicant will be the operator of the farm to which transfer is to be made for each of the years for which the transfer is requested. If the county committee determines that the applicant, due to conditions beyond his control, is prevented from remaining the operator of a farm to which an owner transfer has been approved, the transfer may remain in effect for the period specified at the time the transfer was filed. Conditions beyond the owner's control shall include, but are not limited to death, illness, incompetency, or bankruptcy.

(b) *Filing Transfer Agreements.* No lease of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this section, has been executed on Form ASCS–375 and filed within the time periods prescribed in paragraph (b)(1) or (2) of this section, with the county committee in the county where the farms are administratively located.

(1) *Transfers filed during normal planting period.* Transfers to be effective beginning with the normal planting period shall be filed by the date set by the State committee which shall be no later than June 14 of the current year. Records of transfer filed after the date set by the State committee but prior to August 16 may be considered timely filed by the date set by the State committee if the county committee with approval of the State committee finds that (i) the lease was agreed upon no later than the date set by the State committee, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the lessee or lessor. Transfer agreements filed or considered as timely filed by the date set by the State committee requires adjustments in the acreage allotments for both the lessor and lessee farms.

(2) *Transfers filed after normal planting period.* Transfers filed under the conditions in paragraph (j)(2) of this section shall not become effective unless filed no later than December 31 of the current year. Records of transfers filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that (i) the lease was agreed upon no later than December 31, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the lessee or lessor. No adjustments in acreage allotments shall be made for transfers filed under this paragraph (b)(2) of this section.

(c) *Maximum period of transfer by lease or by owner on a temporary basis.* A record of transfer by lease, or by owner on a temporary basis, shall not be for a period exceeding 5 years.

(d) *Farm poundage quota basis for transfer.* Transfers shall be effected by transfer of farm poundage quota. For a transfer filed (or considered filed) on or before the date set by the State committee under paragraph (b)(1) of this section, the transfer of farm poundage quota will result in adjustment in the farm acreage allotment on the basis of the farm yields for the transferring and receiving farms, respectively. The adjusted acreage shall be determined by multiplying the farm poundage quota transferred by the reciprocal of the national quota factor (1.0 ÷ the national quota factor) and dividing the results by (1) the farm yield for the transferring farm to determine the reduction in acreage for the transferring farm, and (2) the farm yield for the receiving farm to determine the acreage to add to the receiving farm. For transfers filed after the date set by the State committee under the conditions prescribed in paragraph (j)(2) of this section, no adjustment in the farm acreage allotments for the transferring and receiving farms shall be made.

(e) *Productivity acreage.* When the poundage quota is transferred by sale or by permanent owner transfer, the productivity pool shall be increased or decreased to reflect the algebraic difference obtained by subtracting the acreage added to the receiving farm from the acreage deducted from the transferring farm.

(f) *Adjustment in national or State allotment.* The adjustment made in any peanut allotment because of the transfer of a higher or lower producing farm shall not reduce or increase the size of any future national or State allotment.

(g) *Transfer not to be approved.* The county committee shall not approve a transfer:

(1) If after approval the total increase in the farm peanut allotment from transfers by purchase in prior years and by lease and purchase in the current year will exceed 50 acres, except that this limitation shall not apply to transfers approved under the conditions of paragraph (j)(2) of this section.

(2) Of reapportioned poundage quota.

(3) Of poundage quota which resulted from undermarketings.

(4) Of poundage quota which result from approval of a new farm allotment in the current year.

(5) Of poundage quota by sale if allotment or poundage quota was transferred to the farm by sale within the 3 preceding crop years.

(6) If after approval the difference between the effective poundage quota and the effective preliminary poundage quota is less than the pounds of peanuts previously contracted under the provisions of Part 1446 of this title.

(h) *Transfer of pooled allotments.* Poundage quotas established for a farm as pooled poundage quotas under Part 719 of this chapter may be transferred:

(1) On a permanent basis during the 3-year life of the pooled poundage quota, or

(2) On a temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period.

(i) *Consent of lienholder.* A transfer of poundage quota from a farm which the county committee has been informed is subject to a mortgage or other lien shall not be approved unless the transfer is agreed to in writing by the lienholder.

(j) *Transfers to and from a farm*—(1) *Transfer filed during normal planting period.* The county committee shall not approve a transfer which is filed (or considered filed) on or before the date set by the State committee under paragraph (b)(1) of this section if the approval would result in a transfer both to and from the farm during the period ending on the date set by the State committee of the same crop year: *Provided,* That a transfer may be approved if a poundage quota is transferred temporarily from a farm for 1 or more years (and the transfer remains in effect) and the farm is subsequently combined with another farm that is otherwise eligible to receive poundage quota by transfer.

(2) *Transfer filed after the normal planting period.* A temporary transfer of poundage quota either to or from the same farm (but not both) may be approved by the county committee if filed after the date set by the State committee under paragraph (b)(1) of this section, even though a transfer which was filed before such date is in effect for the farm.

(k) *Effect of transfer on acreage history*—(1) *Permanent transfer.* The acreage history for both the transferring farm and the receiving farm shall be adjusted for the current year and for the 2 preceding years to reflect the applicable increase or decrease in the allotment which resulted from the transfer.

(2) *Temporary transfer.* An acreage equal to the decrease in allotment as a result of a temporary transfer of poundage quota shall be considered to have been planted on the farm from which the poundage quota was transferred. The increase in allotment resulting from a temporary transfer of poundage quota to a farm shall have no effect on acreage history for the farm.

(l) *Effect of transfer filed after peanut acreage reported or after a violation occurs.* The effective farm acreage allotment and effective farm poundage quota for a farm prior to approval of a transfer shall be used in determining:

(1) Eligibility of a farm for price support if the transfer agreement was filed after the farm operator reported the acreage of peanuts on the farm; or

(2) The percentage of reduction in a farm acreage allotment for a violation

of the regulations in this subpart if the violation occurs before approval of the transfer.

(m) *Farm in violation.* If consideration is pending of a violation which may result in an allotment reduction for the current year on the transferring farm, the county committee shall delay approval of the transfer until action on the violation has been completed or a determination has been made that an allotment reduction cannot be made in the current crop year. If an allotment reduction is to be made in the next year's allotment, a transfer by lease shall be limited to one year. The county committee shall delay an allotment reduction until the next year if the committee has approved a transfer from the farm and the effective allotment after the transfer is less than the amount of the allotment reduction.

(n) *Acreage apportioned to farms for types in short supply.* Poundage quota resulting from acreage apportioned to farms for types in short supply pursuant to § 729.11 shall not be transferred by sale or by owner on a permanent basis but such poundage may be transferred by lease or by owner for the current year only.

(o) *County committee action*—(1) *Approval of transfers.* The county committee shall approve the transfer of poundage quota only if it determines that a timely filed record has been received and that the transfer complies with the requirements of this section. A transfer shall not be effective until approved by the county committee. The county committee may delegate authority to the county executive director and to other county office employees to approve transfers of poundage quotas.

(2) *Notice of revised allotments.* A revised notice of farm allotment and poundage quota must be issued for each farm affected by the transfer of allotment and poundage quota.

(3) *Cancellation of transfer.* A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement or approved due to error by the county committee shall be canceled as of the date of approval. However, the cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to planting of the crop.

Where cancellation of a transfer is required, the county committee shall issue revised notices of allotment and poundage quota showing the reasons for cancellation.

(p) *Withdrawal or minor revisions.* Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the program will not be impaired, the county committee may permit withdrawal or minor revisions of transfers upon written request by all parties to the transfer: *Provided,* That: (1) Temporary transfers may be withdrawn or revised before peanuts are planted during any year of the agreement, and (2) permanent transfers may be withdrawn or revised before peanuts are planted and only during the first year of the agreement.

(q) *Recomputation of previously approved multiple year transfer.* For a multiple year transfer approved after 1977, annually recompute the transfer by limiting the poundage quota transferred to the smaller of:

(1) The poundage quota initially transferred, or (2) the farm poundage quota for the transferring farm. The acres for the transferring and for the receiving farm shall be determined in the same manner as the acres for annual transfer are determined as provided in this part.

(r) *Amendment of multiple year transfer agreements filed on or before December 31, 1977.* Notwithstanding any other provision in this section, a multiple year temporary transfer approved before 1978 shall not be effective after 1977 unless an amended ASCS-375 is filed. the county committee shall notify the operators of both the transferring farm and the receiving farm of the requirement for filing an amended ASCS-375 in order for the previously filed transfer agreement to remain in effect. The amended ASCS-375 must be filed at the county ASCS office within 20 days from date of notification by the county committee that an amended transfer agreement is required. the amended agreement shall be on the basis of farm poundage quota and shall be agreed upon and signed by each person whose signature is required under the terms and conditions in paragraph (a) of this section.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377, 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658; 55 Stat. 90, as amended, 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a, 805, 806); 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

[43 FR 28987, July, 5, 1978, as amended by Amdt. 3, 45 FR 34862, May 23, 1980]

§ 729.31 Transfer of peanut farm acreage allotment for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the peanut acreage allotment for any farm in the county. The county committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* the owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of peanut acreage within the farm peanut allotment for such year to another farm in the same county or in an adjoining county in the same or adjoining State if such acreage cannot be timely planted or replanted because of the natural disaster. The transfer of the peanut allotment shall also have the effect of transferring the poundage quota. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the farm allotment established under this part less such acreage planted to peanuts and not destroyed by the natural disaster.

(d) *County committee approval.* The county committee shall approve the transfer of such peanut acreage if it finds that:

(1) Such acreage on the transferring farm could not be timely planted or replanted because of the natural disaster; and

(2) One or more of the producers of peanuts on the transferring farm will be a bona fide producer engaged in the production of peanuts on the receiving farm and will share in the proceeds of the peanuts.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old peanut farm.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments to have been planted to peanuts on the farm from which such allotment is transferred.

(g) *Closing dates.* The application for transfer shall be filed with the county committee on or before June 14 of the current year unless the county committee with concurrence of a State committee representative determines that the failure to file the application by June 14 was the result of conditions beyond the control of the applicant.

§ 729.32 Release and reapportionment.

(a) Release and reapportionment shall be effected by temporary or permanent release and temporary reapportionment of farm poundage quota. Release and reapportionment of farm poundage quota will result in a decrease (release) or increase (reapportionment) in the acreage allotment on the basis of the farm yield for the respective farm. The released acreage will be determined by multiplying the released poundage quota by the reciprocal of the national quota factor and dividing the result by the farm yield for the releasing farm. The reapportioned acreage will be determined by multiplying the reapportioned poundage quota by the reciprocal of the national quota factor and dividing the results by the farm yield for the farm receiving the reapportioned poundage quota.

(b) *Release of farm poundage quota.* Except as provided in paragraph (d), the farm operator may release part or all of the farm poundage quota (except quota resulting from undermarketings in a previous year) by filing a written release with the county committee.

(c) *Closing date to release or to request reapportionment.* The State committee shall establish and publicize the closing date(s) for release of the farm acreage allotment and poundage quota for the State or for areas consisting of one or more counties in the State taking into consideration the normal planting date(s) for the State. The closing date for release shall be no later than the date on which planting of peanuts normally becomes general on farms in the State, area or county. The established date(s) also shall be the closing date for filing a request to receive reapportioned poundage quota.

(d) *Signatures required in special cases.* If the entire allotment was released in each of the 2 years preceding the current year, the release of the entire farm poundage quota for the current year shall be signed by both the owner and the operator of the farm. If any part of the farm poundage quota is permanently released (i.e., for the current year and all subsequent years), the release shall be in writing and signed by both the owner and operator of the farm. The farm poundage quota may not be released: (1) From a new farm, (2) for the current year, if the owner of the farm files an objection with the county committee in writing, before a release is filed by the operator, and (3) from the eminent domain pool if an application for transfer from the pool has been filed in accordance with Part 719 of this chapter.

(e) *Reapportionment of farm poundage quota.* A farm shall be eligible to receive reapportionment of released poundage quota only if a written request is filed by the farm owner or operator at the office of the county committee pursuant to this section. The farm poundage quota released pursuant to this section, except poundage quota released from State prison farms, may be reapportioned by the county committee to other farms in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of land, labor, and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts.

(f) *Closing date for making reapportionment.* Poundage quota released to the county committee may be reapportioned by the county committee to other farms in the county at any time not later than 30 days following the closing date set by the State committee pursuant to this section for filing a request for an increase in the poundage quota.

(g) *Credit for released or reapportioned poundage quota.* The release of the farm poundage quota for the current year only shall not operate to reduce the allotment or poundage quota for the farm for any subsequent year unless the farm becomes ineligible for an old farm allotment. Any increase in the allotment for a farm resulting from reapportionment of farm poundage quota shall not operate to increase the allotment or poundage quota for such farm for any subsequent year.

(h) *Applicability to a farm acquired by an agency having the right of eminent domain.* During any year of the period the peanut acreage allotment and poundage quota from a farm remains in the allotment pool pursuant to Part 719 of this chapter, the displaced owner may release all or any part of the farm poundage quota to the county committee.

(i) *No reapportionment of released quota to zero allotment farm.* Poundage quota may not be reapportioned to a farm on which the basic allotment for the current crop year is reduced to zero for a violation of the peanut marketing quota regulations.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377, 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658; 55 Stat. 90, as amended; 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a); secs. 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

[43 FR 28987, July, 5, 1978, as amended by Amdt. 3, 45 FR 34863, May 23, 1980]

MARKETING CARDS AND PRODUCER IDENTIFICATION CARDS

§ 729.42 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (MQ-76) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the current year for use by each producer on the farm for marketing his/her share of peanuts produced except that:

(1) A card issued for experimental peanuts shall be issued in the name of the experiment station, and (2) a card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the name of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing his/her proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part to the share of a producer in the peanuts available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data entered on marketing card and supplemental card.* (1) Before issuance the following data and information must be entered on the marketing card in the spaces provided:

(i) Effective farm poundage quota;

(ii) If applicable, the pounds of peanuts contracted and the handler number of the contracting handler; and

(iii) Converted penalty rate, if applicable.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The balance of the poundage quota from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the poundage quota (not to exceed the balance of poundage quota available) to be assigned to each card.

(4) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the:

(i) Name and address of the farm operator, and (ii) the State, county code, and farm serial number. If an embossed identification card is not available the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such time as the peanuts are inspected and MQ-94 has been executed by the inspection service.

(3) After the identification card is returned to the operator it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen provided the farm operator gives immediate written notice of such fact and furnishes a satisfactory report of the quantity of peanuts marketed through use of the lost, stolen, or destroyed marketing card.

§ 729.43 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county debt record any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the claim notation. A notation showing "PMQ" (peanut marketing quota) as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of penalty and accured interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to marketing quotas in which the person liable for payment of the penalty has an interest. A claim notation other than "PMQ" shall constitute notice to any peanut buyer that subject to prior liens the net proceeds, to the extent of the indebtedness shown, from any price support loan or purchase settlement due the debtor must be paid to the "Agricultural Stabilization and Conservation Service, USDA." The acceptance and use of a marketing card bearing a notation and information concerning indebtedness to the United States shall not constitute a waiver by the indebted producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A claim free marketing card shall be issued when the claim has been paid.

§ 729.44 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure of alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of converted penalty rate the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall initial each correction made on the marketing card. An invalid card, if not validated shall be canceled and a replacement card shall be issued.

§ 729.45 Misuse of marketing card.

Any information which causes a member of a State, county, or community committee, or an employee of the State or county office to believe that a marketing card is being misused pursuant to this subpart shall be reported immediately by such person to the county or State office.

MARKETING QUOTA PENALTIES

§ 729.46 Penalty rate.

(a) *Basic penalty rate.* The basic penalty rate is 120 percent of the basic support price for quota peanuts for the current marketing year as provided in Part 1446 of this title.

(b) *Penalty rate for unintentional error*—(1) *1978-79 Marketing Year.* The penalty rate shall be 10 percent of the basic support price for the current marketing year as provided in Part 1446 of this title.

(2) *1979 through 1981 marketing years.* The penalty rate shall be 20 percent of the basic support price for quota peanuts for the current marketing year as provided in Part 1446 of this title.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377, 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658; 55 Stat. 90, as amended; 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a); secs. 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

[Amdt. 3, 45 FR 34863, May 23, 1980, as amended at 48 FR 9219, Mar. 4, 1983; 49 FR 14284, Apr. 10, 1984]

§ 729.47 Peanuts on which penalty is due.

(a) Penalty is due at the basic penalty rate on:

(1) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm: *Provided,* That if the marketing of quota peanuts for which a penalty is to be assessed was done unintentionally or unknowingly by the producer and/or handler, the penalty shall be assessed at a reduced rate provided for in § 729.46(d), upon a determination by the county ASC committee that the error in excess marketing was unknowingly or unintentionally made and that a reduction in the amount of penalty would not impair the effective operation of the price support program for peanuts. The provisions of this paragraph shall be applicable only to producers or handlers who made a good faith effort to comply fully with the terms and conditions of the program and review of the assessment of such penalties shall be handled in accordance with Part 711 of this chapter.

(2) All peanuts produced on excess acreage: *Provided,* That such penalty shall be paid on each lot of peanuts marketed from the farm based on the converted basic penalty rate. The converted basic penalty rate shall be determined by:

(i) Dividing the excess acreage by the final acreage to determine the percent of excess; and

(ii) Multiplying the percent of excess by the basic penalty rate per pound.

(3) All peanuts produced on a farm for which the producer:

(i) Failed to timely file a report of peanut acreage as provided in Part 718 of this chapter, or

(ii) Refused to permit entry on the farm for purpose of determining the acreage of peanuts on the farm.

(4) The quantity of peanuts marketed without identification by a valid marketing card.

(5) The quantity of peanuts marketed in excess of the farm marketing quota (falsely identified peanuts) as determined by the county committee with State committee concurrence, even though the farm has no excess acreage: *Provided,* That this provision shall be applicable only when the farm on which the falsely identified peanuts were produced cannot be ascertained.

(6) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be:

(i) The amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm for domestic edible use in excess of the effective farm poundage quota for that farm; plus

(ii) The amount of the farm yield times the excess acreage, if the farm has excess acreage.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377, 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658; 55 Stat. 90, as amended; 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a, 805, 806); 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note))

[44 FR 25404, May 1, 1979, as amended by Amdt. 2, 45 FR 6082, Jan. 25, 1980]

§ 729.48 Peanuts grown for experimental purposes.

(a) No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experimental station and produced at public expense by employees of the experiment station, or peanuts produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station: *Provided*, That the director of the publicly-owned agricultural experiment station furnishes the State Executive Director a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(1) Name and address of the publicly-owned experiment station,

(2) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only,

(3) The acreage of peanuts grown on each farm for experimental purposes only, and

(4) A signed statement that such acreage of peanuts was grown on each farm for experimental purposes only, was necessary for carrying out experimentation, and the peanuts were produced under the direction of representatives of the publicly-owned experiment station.

§ 729.49 Persons to pay penalty.

(a) *Marketings to handlers.* The handler is liable for the penalty due on peanuts which the handler buys or otherwise acquires from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm, the handler and each of the producers on the farm shall be held jointly and severally liable for the amount of the penalty. If the peanuts on which penalty is due were inspected by the Federal State Inspection Service, the handler's liability for penalty is limited to the value of the lot of peanuts.

(b) *Other marketings.* The producer is liable for the penalty due on any peanuts marketed to persons who are not peanut handlers.

(c) *Penalty for error on marketing card.* The producer and the handler are jointly and severally liable for penalty which results ultimately from an error or omission in recording the balance of quota or contract on the marketing card after a marketing of peanuts. If the peanuts on which the penalty was due were inspected by the Federal State Inspection Service, the handler's liability for penalty is limited to the value of the lot of peanuts unless the error increased the balance of quota or contract pounds recorded on the marketing card.

§ 729.50 Payment of penalty.

A draft, money order, or check drawn payable to the "Agricultural Stabilization and Conservation Service, USDA", may be used to pay any penalty, other indebtedness, or interest thereon. A draft or check shall be received subject to collection and payment at par. The penalty becomes due on the date of marketing, or in the case of false indentification or failure to account for the disposition of peanuts, the date of the false identification or failure to account, as applicable.

The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of 6 percent per annum. Interest accrues from the date penalty was due if the penalty is not remitted by Monday of the third calendar week following the week in which the peanuts were marketed. If a farm is found to have excess peanuts after peanuts are marketed, and for cases of false identification or failure to account if the penalty is not paid within 15 days after written notice to the producer, interest shall accrue from the date of the written notice to the producer.

§ 729.51 Lien for penalty.

A lien on the crop of peanuts on which penalty is incurred, and on any subsequent crops of peanuts subject to marketing quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States until the penalty is paid. The lien on a subsequent crop takes precedence as of the time the debt secured is entered on a county claim record in the county ASCS office, for the county in which the subsequent crop is grown. Each county ASCS office shall maintain a list of peanut marketing penalty liens on subsequent crops which have been entered on the county claim record. The list shall be available for examination upon written request by an interested person.

§ 729.52 Refund of penalties.

After the marketing of peanuts from a farm has been completed and the disposition of all peanuts produced on the farm can be shown, the producer or any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under this subpart. Such request shall be filed with the county ASCS office within 2 years after the payment of the penalty.

§ 729.53 Peanuts grown on State prison farms.

Effective with the 1978 crop, no penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system.

(Secs. 301, 358, 358a, 359, 361-368, 373, 375, 377, 52 Stat. 38, as amended; 55 Stat. 88, as amended; 81 Stat. 658; 55 Stat. 90, as amended; 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a); secs. 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

[Amdt. 3, 45 FR 34863, May 23, 1980]

PRODUCER IDENTIFICATION AND DESIGNATION OF PEANUTS MARKETED

§ 729.58 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card (MQ-76P) and the peanut marketing card (MQ-76) which was issued for the farm on which the peanuts were produced.

§ 729.59 Designation of peanuts.

Peanuts which are not inspected by the Federal-State Inspection Service prior to marketing must be marketed as quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota, loan additional, or contract additional. The designation must be made within the time allowed by the handler but not later than the close of inspection on the first workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected. In the absence of a designation, any segregation 1 peanuts shall be marketed in the following order of priority:

(a) As quota peanuts to extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing.

(b) As contract additional to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler, or

(c) As loan additional peanuts.

[44 FR 25404, May 1, 1979; 44 FR 28294, May 15, 1979]

PRODUCER RECORDS AND REPORTS

§ 729.60 Report of marketing green peanuts.

(a) The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form MQ-98-1 at the county ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The number of acres on the farm planted to peanuts;

(2) The acreage on the farm from which peanuts were marketed as green peanuts;

(3) The name and address of the buyer to or through whom each lot of green peanuts was marketed, the type and quantity in each lot marketed and the date marketed: *Provided*, That where green peanuts are marketed by the producer in small lots direct to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of

the quantity so marketed and the name and address of each buyer need not be shown but in lieu thereof the place of marketing shall be shown.

(b) Failure to file any report of the marketing of green peanuts as required by this section, or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts produced on the farm.

§ 729.61 Report of acquisition of seed peanut.

If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the farm operator shall file a report with the county ASCS office of the acquisitions of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made, Part 718 of this title. The report shall include:

(a) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year.

(b) The pounds of peanuts acquired for seed.

(c) The basis (farmer's stock or shelled) of determining the quantity acquired.

(d) The type of peanuts acquired.

(e) The date of acquisition.

§ 729.62 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form MQ-98-1, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The MQ-98-1 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an MQ-98-1 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in:

(1) A reduction of the peanut allotment and farm poundage quota for the farm, and

(2) Assessment of marketing penalties, as provided in this Part 729.

(c) All peanuts marketed to persons other than registered handlers shall be considered marketed as quota peanuts.

§ 729.63 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time of returning the last marketing card for a farm, the farm operator shall execute the certification on the marketing card as to the pounds of peanuts retained for seed or other uses. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for disposition of peanuts marketed from the farm unless a satisfactory report of disposition is furnished to the county committee.

§ 729.64 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm (even though the farm has no excess acreage), upon written request by certified mail from the State Executive Director, shall furnish a report of production and disposition to the State committee. The report must be filed on MQ-98, Report of Production and Disposition within 15 days after the request is mailed. The report shall show:

(1) The final acreage of peanuts on the farm;

(2) The total production of peanuts on the farm; and

(3) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed: *Provided,* That where peanuts are marketed in small lots to persons who are not established buyers the report may be made as either a daily or weekly summary of the number of pounds marketed and the name and address of the buyer(s) need not be shown but in lieu thereof the place of marketing shall be shown; and

(4) The quantity and disposition of peanuts not marketed.

(b) Failure to file the MQ-98 as requested or the filing of an MQ-98 which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for production and disposition of peanuts produced on the farm.

§ 729.65 Reduction of farm allotment and poundage quota for violation.

(a) *False identification.* If peanuts are falsely identified the acreage allotments and poundage quotas next established for each farm involved in the false identification shall be reduced as provided in this section, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing, or (2) no person connected with such farm for the current year caused, aided, or acquiesced in such marketing.

(b) *Failure to account for production and disposition.* If complete and accurate proof of the production and disposition of all peanuts produced on the farm is not furnished in the manner and within the time prescribed under this Part 729, the acreage allotment and poundage quota next established for the farm shall be reduced as provided in this section except that the reduction for a farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition or (2) no person connected with such farm for the current year caused, aided, or acquiesced in the failure to furnish such proof.

(c) *Quantity of peanuts involved in the violation.* The quantity of peanuts determined by the county committee to have been falsely identified or for which satisfactory proof of production and disposition has not been furnished shall be considered the quantity of peanuts involved in the violation. If the actual production of peanuts on the farm is not known, the county committee shall estimate the actual production, taking into consideration the condition of the peanut crop during the growing and harvesting season, if known, and the actual yield per acre of peanuts on other farms in the locality on which the soil and other physical factors affecting the production of peanuts are similar. The estimated actual production shall be considered as the actual production for purposes of determining the quantity of peanuts involved in the violation. The quantity of peanuts involved in the violation shall be the actual production of peanuts on the farm less the amount of peanuts for which satisfactory proof of production and disposition has been shown.

(d) *Amount of reduction.* The amount of reduction shall be that percentage which the quantity of peanuts involved in the violation is of the respective farm marketing quota for the farm for the marketing year in which the violation occurred. Where the quantity of peanuts involved in the violation equals or exceeds the farm marketing quota, the amount of reduction shall be 100 percent.

(e) *County administrative hearing.* The farm operator involved shall be notified in writing by the county executive director of the time and place for any hearing with the county committee concerning a violation and the nature of the violation. The farm operator shall be requested to bring any relevant supporting documents to the hearing. The hearing shall be held before the allotment and poundage quota is reduced for the farm except in the case of failure to return the marketing card.

(f) *Time for making reduction for a violation in a prior year.* A reduction in the farm acreage allotment and farm poundage quota for a farm for a violation in a prior year shall be made in the current year, provided it can be made on or before the applicable date as follows:

February 25—Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, South Carolina, Tennessee, and the following counties in Texas:

Atascosa, Austin, Bee, Bexar, Colorado, DeWitt, Demmit, Duval, Fort Bend, Frio, Gonzales, Guadalupe, Harris, Jim Wells, Karnes, La Salle, Lavaca, Live Oak, Medina, Victoria, Waller, Webb, Wilson, and Zavala.

March 31—North Carolina, Oklahoma, Texas (except counties listed for February 25), and Virginia.

If the reduction cannot be made in the current crop year by the applicable date above, the reduction shall be made in a subsequent crop year.

(g) *Allotment reductions for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be computed on the portion of the allotment derived from the farm involved in the violation.

(h) *Allotment reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the percentage of reduction for the allotments for the divided farms shall be the same as though no division had been made.

(i) *Quota reduction.* If an acreage allotment reduction is made under this section, the farm poundage quota shall be reduced to reflect such reduction.

(j) *Effect of reduction on subsequent crops.* Any reduction in the allotment and farm poundage quota for a farm made under this section shall not operate to reduce the allotment and farm poundage quota for such farm for any subsequent year.

HANDLER'S REGISTRATION, RESPONSIBILITIES AND RECORDS

§ 729.66 Registration of handlers.

Each person who plans to acquire peanuts for processing or resale shall register as a handler according to the provision of this section and prior to acquiring peanuts.

(a) *Persons acquiring noninspected peanuts.* A person who has not registered under the provisions of paragraph (b) of this section and who plans to buy or otherwise acquire peanuts for processing or resale prior to the peanuts being inspected by a duly authorized inspector of the Federal-State Inspection Service must register with the State ASCS office of the State in which the person will operate as a handler, or if operating in more than one State, the State of residence or principal business location. One may register by completing an MQ-96, Application for Peanut Handler Card, and submitting it to the State ASCS office serving the State in which the handler is registered.

(b) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing an MQ-96, Application for Peanut Handler Card and submitting it to the Virginia, Georgia or Texas State ASCS Office in the area in which the handler is located.

(c) *Peanut buyer card and buying point card.* The office through which a handler registers will obtain and issue an embossed peanut buyer card on which will be entered the handler's registration number, name and address. The buyer card will be used by the handler for identification when the handler buys or sells peanuts. A buying point card(s) will be obtained and issued to a handler who operates a buying point at which peanuts are inspected. The buying point card will be embossed with a number and used to identify the physical location of the buying point at which the peanuts are inspected.

(Approved by the Office of Management and Budget under control number 0560-0006)

(44 U.S.C. 3506)

[44 FR 25404, May 1, 1979, as amended at 47 FR 745, Jan. 7, 1982]

§ 729.67 Records and reports required of handlers.

Each handler shall keep records and make reports as required by this section.

(a) *Marketing records.* The handler shall maintain the following records with respect to each lot of farmer's stock peanuts which the handler acquires for his own account.

(1) Farm number (including State and county code) of the farm on which peanuts were produced (obtained from producer's identification card or marketing card) or if purchased from a handler, the handler's number.

(2) Name of seller.

(3) Date of marketing.

(4) Pounds marketed as:

(i) Quota.

(ii) Additional loan.

(iii) Contract additional.

(5) Type of peanuts.

(6) Amount of penalty due and amount collected from the producer.

(b) *Resales.* Each handler who resells farmer's stock peanuts shall keep records of:

(1) The name and address of the buyer.

(2) The handler number of the buyer, if the peanuts are sold to a handler.

(3) The date of the sale.

(4) The type of peanuts sold, and

(5) The pounds (net weight) of peanuts sold.

(c) *Inspected peanuts.* If a lot of peanuts was inspected by the Federal-State Inspection Service, the handler shall complete MQ-94, Inspection Certificate and Sales Memorandum to include the:

(1) Name and address of the farm operator and the State and county code and farm number of the farm on which the peanuts were produced if the peanuts are marketed by the producer, or the handler number if the peanuts are marketed by a handler.

(2) Buying point number assigned to identify the physical location of the buying point at which the peanuts were marketed.

(3) Name, address, and handler number of the handler, or the association number, name, and address if the peanuts are accepted for loan through the association.

(4) Net weight of the peanuts.

(5) Quantity of peanuts marketed as either loan quota, loan additional, commercial quota, or contract additional.

(6) Date of purchase.

(7) Amount of penalty collected.

(d) *Noninspected peanuts.* A handler who purchases farmer's stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete MQ-95, Report of Purchase of Noninspected Peanuts, for each lot of farmer's stock peanuts purchased. The handler shall complete the MQ-95 to show:

(1) The name and address of the seller.

(2) The State and county code, and farm number if the peanuts are purchased from the producer of the peanuts or if the peanuts are purchased from a handler, the MQ-95 shall show the handler's name, address, and registration number,

(3) The type of peanuts purchased,

(4) The date of purchase,

(5) Quantity purchased, and

(6) Method of determining the weight.

After the required information has been recorded, the seller shall sign and date the MQ-95. The handler shall use MQ-95P, Handler's Report of Purchases of Noninspected Peanuts, to transmit the MQ-95's to the State ASC committee in the State in which the handler's business is located. The MQ-95's shall be transmitted weekly.

(e) *Marketing Card Entries.* Immediately after each lot of peanuts is marketed, the handler shall record from the MQ-94 or MQ-95 to the marketing card the following entries:

(1) The MQ-94 serial number which identifies the lot of peanuts or the date of marketing, if the peanuts were not inspected,

(2) The net pounds marketed,

(3) The unused poundage quota balance remaining after the marketing,

(4) The unused contract poundage balance remaining after the marketing,

(5) The handler's number or, for loan peanuts, the association number,

(6) For inspected peanuts, the buying point number,

(7) Type of peanuts marketed, and

(8) Any penalties or claims collected.

(f) *Transmittal of penalties.* Form MQ-80 Peanuts, "Buyer's Transmittal of Claims and/or Marketing Penalty", shall be used by a handler to transmit a collection of a penalty or a claim. Each collection shall be sent to the county ASCS office which issued the marketing card. The transmittal shall be made within two weeks after the end of the week in which the collection is made.

(g) *Peanuts shelled for a producer.* The handler shall maintain records of peanuts shelled for a producer as follows:

(1) Date of shelling.

(2) Name and address of the producer for whom the peanuts were shelled.

(3) State and county code and farm number of the farm on which the peanuts were produced.

(4) Quantity of peanuts (farmer's stock basis) shelled.

(5) Quantity of shelled peanuts retained by the sheller.

(6) Quantity returned to the producer.

(h) *Peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer as follows:

(1) State and county code and farm number of the farm on which the peanuts were produced.

(2) Name and address of the producer for whom peanuts were dried.

(3) Quantity dried (weight after drying, farmer's stock basis) and date drying is completed.

§ 729.68 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business shall keep such records for each business.

§ 729.69 Penalty for failure to keep records and make reports.

Any person, who dries farmer's stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, any farmer engaged in the production of peanuts, who fails to make any report or keep any record as required under this subpart or who makes any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 as provided by section 373(a) of the Act.

§ 729.70 Examination of records and reports.

The Deputy Administrator, the Director, Production Adjustment Division, the State Executive Director, or any person authorized by any one of such persons, and any auditor or agent of the Office of Investigation is authorized to examine any records pertinent to the peanut allotment and marketing quota program. Upon request from any such person any person who dries farmer's stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation in connection with enforcement of the Act and this subpart.

§ 729.71 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be requested in writing by the State Executive Director, or the Director, Production Adjustment Division. The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Approved by the Office of Management and Budget under control number 0560-0012)

(44 U.S.C. 3506)

[44 FR 25404, May 1, 1979, as amended at 47 FR 745, Jan. 7, 1982]

§ 729.72 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, and by all members of county and community committees, and all county office employees and only such data so reported or acquired, as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under Title III of the Act.

Subpart—Poundage Quota Regulations for 1982 Crop of Peanuts

AUTHORITY: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 65, as amended, 66, as amended, 91 Stat. 944, as amended, 95 Stat. 1248, (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375 as amended); sec. 108A, 95 Stat. 1254 (7 U.S.C. 1445c-1).

SOURCE: 47 FR 15969, Apr. 13, 1982, unless otherwise noted.

GENERAL

§ 729.111 Basis and purpose.

(a) The regulations contained in this subpart are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and are applicable to the 1982 crop of peanuts. They govern the establishment of farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, the keeping of records, and the making of reports incident thereto.

(b) The acreage allotment, marketing quota, and poundage quota regulations for peanuts for the 1978 and subsequent crops (43 FR 28987 and 44 FR 25404, 28294, as amended) are hereby superseded but remain effective with respect to the 1978 through the 1981 crops of peanuts.

§ 729.112 Extent of calculations and rule of fractions.

Computations shall be rounded according to Part 793 of this chapter. The terms set forth below shall be expressed as follows:

(a) Acreage in acres and tenths of acres.

(b) Penalty or damages in dollars and cents.

(c) The quantity of peanuts produced, considered produced and marketed; a preliminary farm poundage quota; a farm poundage quota; an effective farm poundage quota; a farm yield; and an actual yield per acre, in whole pounds.

(d) Factors as a four place decimal except where a different place decimal factor is established by the Deputy Administrator.

§ 729.113 Definitions.

The definitions in and provisions of Parts 718, 719, and 720 of this chapter are hereby incorporated by reference in these regulations unless the context or subject matter or the provisions of these regulations require otherwise. References to other parts of this chapter or title include any amendments to the referenced parts. Unless the context or subject matter require otherwise, the following words and phrases, as used in this subpart and in all related instructions and forms shall mean:

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Areas.* (1) The southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Base period.* The 3 calendar years immediately preceding the year for which a farm poundage quota is being established.

(d) *Buyer.* A person who:

(1) Buys or otherwise acquires peanuts in any form;

(2) Markets, as a commission merchant, broker, or cooperative, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(3) Receives peanuts as collateral for or in settlement of a price support loan.

(e) *Considered produced.* The number of pounds of peanuts to be considered produced for the current year or for a base period year for use in computing a future farm poundage quota. Considered produced pounds for a farm will be the sum of the pounds (limited to the farm poundage quota less the pounds of peanuts marketed) which:

(1) Were not produced because of a natural disaster as determined by the county committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as the "Deputy Administrator").

(2) Were in an eminent domain pool.

(3) Are equal to the farm poundage quota on a farm where the farm was either purchased or a transfer by sale was approved, after the latest normal planting date for peanuts for the county for the 1980 crop year, and only to the extent that such farm poundage quota was produced or considered produced on the farm to which allocated during the 1981 crop year.

(4) Are equal to the total pounds produced or considered produced on a farm to which was allocated for the 1981 crop year a new farm allotment and quota in accordance with § 729.17 of this chapter.

(f) *Cropland.* Land on a farm which is determined by the county committee to be suitable for the production of peanuts and on which a seedbed could have been prepared and a normal crop produced using practices and equipment normally used in the county for planting peanuts. Land not considered suitable includes, but is not limited to, established orchards, vineyards, one-row shelter belts, land seeded to trees, and land being prepared for housing developments, shopping centers, or other noncrop uses as determined by the county committee.

(g) *Crushing.* The processing of peanuts (1) to extract oil for food uses and meal for feed uses, or (2) into flakes for domestic food uses other than peanut butter, candy, confections or other traditional domestic edible uses.

(h) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Domestic edible use.* Peanuts which are: (1) Used for milling to produce domestic food peanuts, other than peanuts used for crushing; (2) used for seed; or (3) dug peanuts used or consumed on the farm.

(j) *Effective farm poundage quota.* The quota determined in accordance with § 729.126.

(k) *Excess peanuts.* The quantity of peanuts marketed or considered marketed for domestic edible use in the current marketing year in excess of the effective farm poundage quota.

(l) *Farm poundage quota.* The quota determined in accordance with § 729.124.

(m) *Farm yield.* The farm yield determined in accordance with § 729.127.

(n) *Farmers stock peanuts.* Dug peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers.

(o) *False identification.* False identification shall include the following:

(1) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production; or

(2) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm; or

(3) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm.

(p) *Final acreage.* The acreage on the farm from which peanuts are produced as determined and adjusted in accordance with Part 718 of this chapter.

(q) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(r) *Inspector.* A Federal or Federal-State inspector authorized or licensed by the U.S. Department of Agriculture.

(s) *Marketed.* To dispose of peanuts (including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form) by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "market," "marketing," and "for market" shall have corresponding meanings to the term "marketed" in the connection in which they are used. The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts, for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to the producer by anyone. Any lot of farmers stock peanuts will be considered as marketed when delivered by the producer to the buyer pursuant to an oral or written sales agreement. Peanuts which are delivered by the producer as collateral for or in settlement of a price support loan will be considered as marketed at the time of delivery. Delivery shall be deemed to have occurred when unloaded at the delivery point. Any peanuts retained on the farm for seed or other use shall be considered marketings of quota peanuts or marketings for domestic edible use.

(t) *Marketing year.* For each crop of peanuts, the period beginning August 1 of the current year and ending July 31 of the following year.

(u) *National poundage quota.* 1,200,000 tons for 1982.

(v) *Planted acreage.* The final acreage of peanuts on a farm determined in accordance with the provisions of Part 718 of this chapter.

(w) *Peanuts.* All peanuts produced, excluding any peanuts which were not dug or were not picked or threshed before or after marketing from the farm and excluding any peanuts marketed by the producer before drying or removal of moisture from such peanuts by natural or artificial means for consumption exclusively as boiled peanuts (referred to as "green peanuts"). If a lot of farmers stock peanuts has been inspected by the Federal-State Inspection Service at the time of marketing, the quantity in the lot shall be the gross weight thereof less foreign material and excess moisture (moisture in excess of 7 percent in the southeastern and southwestern areas and 8 percent in the Virginia-Carolina area). If the lot of peanuts is not inspected by the Federal-State Inspection Service, the quantity in the lot shall be the gross weight thereof. If shelled peanuts are marketed by a producer, the quantity in the lot (farmers stock basis) shall be determined by multiplying the poundage of the shelled peanuts by 1.5.

(x) *Preliminary farm poundage quota.* The quota determined in accordance with § 729.123.

(y) *Produced.* The total pounds of peanuts dug.

(z) *Quota peanuts.* Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. This includes all peanuts which are dug on a farm except the following: (1) Green peanuts; (2) peanuts which are placed under loan at the additional support rate and not redeemed by the producer; or (3) peanuts which are marketed under a contract between a handler and a producer for export and/or crushing.

(aa) *Seed sheller.* A person who in the course of his usual business operations shells peanuts for producers for use as seed for the subsequent year's crop.

(bb) *Segregation 1 peanuts.* A lot of farmers stock peanuts which (1) have at least 99 percent peanuts of one type, (2) have not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, and (3) are free from visible Aspergillus flavus mold.

(cc) *Undermarketings.* The number of pounds determined in accordance with § 729.125.

(dd) *Yield per acre or actual yield.* The actual yield per acre for the farm obtained by dividing the total production of peanuts for the farm by the final acreage of peanuts.

(ee) *Loan additional peanuts.* Peanuts which are not eligible for marketings as quota peanuts, which are not subject to delivery to fulfill a contract for additional peanuts, and which are pledged as collateral for price support loan at the additional loan rate.

[47 FR 15969, Apr. 13, 1982, as amended at 47 FR 38260, Aug. 31, 1982]

§ 729.114 Types of peanuts.

The generally known types of peanuts have identifying characteristics as follows:

(a) *Runner type peanuts.* These peanuts are commonly known as African Runner, Alabama Runner, Georgia Runner, Carolina Runner, Wilmington Runner, Dixie Runner, or Runner. They are produced principally in the southeastern peanut producing area of the United States and are identified by the following characteristics: Typically two-seeded pods which are practically cylindrical, medium sized, stem end round and the other pointed with a slight keel having shells fairly thick and strong, with shallow veining and corrugation; seeds crowded in pod with adjacent ends sharply shouldered.

(b) *Spanish type peanuts.* These peanuts are commonly known as White Spanish, Small Spanish, Medium-Small Spanish, or Spanish. They are produced principally in the southeastern and southwestern peanut-producing areas of the United States and are identified by the following general characteristics: Typically two-seeded pods which are small, with both ends rounded, the end opposite the stem having an inconspicuous point or keel, and the waist slender; shells very thin, with veining and corrugation but not deep, and seed globular to oval and practically smooth.

(c) *Valencia type peanuts.* These peanuts are commonly known as New Mexico Valencia, Tennessee Valencia, Tennessee White, Tennessee Red, or Valencia. They are produced principally in Tennessee and New Mexico and are identified by the following general characteristics: Typically three or four-seeded, and sometimes five-seeded pods which are long and slender, with the end opposite the stem having a definite point or keel with conspicuous veining and corrugation, and seeds globular to oval.

(d) *Virginia type peanuts.* These peanuts are commonly known as Virginia Runner, Virginia Bunch, North Carolina Runner, North Carolina Bunch, Jumbo, or Virginia. They are produced principally in North Carolina, Virginia, northeastern South Carolina, and Tennessee, and are identified by the following general characteristics: Typically two-seeded pods which are of an average size larger than any other type, pods are roughly cylindrical, with veining and corrugation deep, and seeds cylindrical with pointed ends, length two or three times diameter, and practically smooth.

§ 729.115 Supervisory authority of State committee.

The State committee shall take any action required to be taken by the county committee which the county committee fails to take. The State committee shall correct or require the county committee to correct any action taken by the county committee which is not in accordance with this subpart. The State committee shall also require the county committee to withhold taking any action which is not in accordance wit this subpart.

STATE POUNDAGE QUOTA, FARM POUNDAGE QUOTA, NOTICE TO FARM OPERATOR AND APPEALS

§ 729.120 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out the regulations in this subpart. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 729.121 Determination of State poundage quota.

The State poundage quota shall be in the State's share of the current year's national poundage quota calculated to equal the percentage of the 1981 national poundage quota allocated to farms in the State.

§ 729.122 Reserve for corrections and quota reduction exemptions.

For the purpose of correcting errors, the State committee shall establish a reserve of not to exceed 2 percent of the State poundage quota. If the amount of poundage quota necessary to correct errors is in excess of the reserve established by the State committee, such errors may nevertheless be corrected with the approval of the Deputy Administrator. However, the Deputy Administrator may require the State committee to recalculate the farm poundage quotas for all farms in the State, if the Deputy Administrator determines that the amount of poundage quota necessary to correct errors is substantially in excess of the reserve. In such case, the State committee shall reissue corrected farm poundage quotas for all farms in the State and such corrected farm poundage quota shall be considered the farm poundage quota for the farm for all purposes.

§ 729.123 Determination of preliminary farm poundage quota.

The preliminary farm poundage quota shall be the farm poundage quota established for the farm for the preceding year.

§ 729.124 Determination of farm poundage quota.

The farm poundage quota shall be the preliminary farm poundage quota adjusted downward for poundage quota reductions as required by this section, plus permanent adjustments from reserves and permanent transfers.

(a) *Poundage quota reductions.* The preliminary farm poundage quota for each farm shall be reduced by the county committee in the following order of priority to the extent necessary, in whole or in part, to accomplish the reduction in the total of the preliminary farm poundage quotas for the State to the State poundage quota less the amount withheld for the reserve for the current marketing year.

(1) *Inadequate tillable cropland.* The preliminary farm poundage quota shall be reduced for a farm to the extent the county committee determines that the farm did not have adequate tillable cropland to produce the farm poundage quota during the preceding crop year. A farm for which the acreage allotment and farm poundage quota was in the eminent domain pool on December 22, 1981 shall be considered as having adequate tillable cropland. Farms on which there is inadequate tillable cropland as the result of performance of a conservation practice shall not be exempt from poundage quota reductions under this paragraph.

(2) *Quota not produced.* The preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that the farm poundage quota for such farm was not produced or considered produced during any two of the base period years. If the constitution of the farm differs from the constitution of the farm for any one or more of the base period years, an individual determination shall be made for each separately identifiable

farm tract as it was constituted for that year of the base period.

(3) *Calculation of farm poundage quota reductions under paragraphs* (a) (1) *and* (2). (i) The amount of the farm poundage quota reduction made under paragraph (a)(1) of this section shall equal the amount of the farm poundage quota that was not produced on the farm during the previous crop year because of inadequate tillable cropland.

(ii) The amount of the farm poundage quota reduction made under paragraph (a)(2) of this section shall equal: (A) The preliminary farm poundage quota times the average of the two highest percentages of the farm poundage quota that was not produced or considered produced during two of the three base period years minus (B) the amount of any reduction under paragraph (a)(3)(i) of this section, but not less than zero.

(4) *Application of State factor.* (i) If the cumulative totals of individual farm poundage quota reductions computed in accordance with paragraph (a) (1) or (2) of this section are more than the required reduction (including amounts withheld for the reserve) in the State poundage quota for the current year, a uniform State factor shall be determined by the State committee and multiplied times the reductions of farm poundage quotas computed for the farms in the category for which the farm poundage quota reduction exceeds the total of the required reduction for the State, so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for the reserve.

(ii) If the cumulative total of individual farm poundage quota reductions in paragraphs (a) (1) and (2) of this section is less than the required reduction (including amounts withheld for the reserve) in State poundage quota for the current year, a uniform State factor shall be determined by the State committee and multiplied times the preliminary farm poundage quotas on the remaining farms in the State (including those not reduced to zero in paragraphs (a) (1) and (2) of this section), so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for the reserve.

(b) *Permanent adjustments.* The preliminary farm poundage quota, after adjustments under paragraph (a) of this section, if any, shall be adjusted by the county committee to reflect permanent transfers or adjustments from reserves as set forth in this subpart.

(c) *Eminent domain pool quota.* The farm poundage quota in the eminent domain pool on December 22, 1981 shall not be adjusted by the county committee pursuant to paragraph (a) (1) and (2) of this section. Notwithstanding the provisions of § 719.11 of this chapter, peanut farm poundage quotas in the eminent domain pool on December 22, 1981 shall only be transferred from the eminent domain pool in accordance with § 729.147. Peanut farm poundage quotas on farms acquired by an agency having the right of eminent domain after December 22, 1981 shall not be eligible to be pooled under the provisions of § 719.11. In order to preserve farm poundage quotas in the eminent domain pool on December 22, 1981, such quota must be transferred pursuant to the provisions of § 729.147 during calendar year 1982.

§ 729.125 Determination of undermarketings.

(a) *Actual undermarketings.* Actual undermarketings are the number of pounds by which the total marketings of quota peanuts from the farm during previous marketing years (excluding any marketing year before the marketing year for the 1980 crop) were less than the total amount of the applicable effective farm poundage quotas (disregarding adjustments for undermarketings from prior marketing years) for such marketing years. For purposes of the foregoing sentence, total marketings of quota peanuts for any marketing year shall be the larger of (1) the total production of segregation 1 peanuts on the farm for such year, or (2) the total amount of quota peanuts which were marketed or considered marketed from the farm. However, the total marketings of quota peanuts for any marketing year shall not exceed the effective farm poundage quota for that farm for such year.

(b) *Effective undermarketings.* (1) If 10 percent of the national poundage quota for the marketing year to which the actual undermarketings are to be applied is equal to or greater than the actual undermarketings on all farms, the effective undermarketings for the farm shall be the same as the actual undermarketings.

(2) If the conditions in paragraph (b)(1) of this section are not applicable, the actual undermarketings will be apportioned to each farm in such manner that the effective undermarketings (i) will not be less than the smaller of the actual undermarketings or 10 percent of the farm poundage quota; (ii) will not be more than the actual undermarketings; and (iii) will be apportioned so as to cause, insofar as practicable, the total of the effective undermarketings on all farms to equal 10 percent of the national poundage quota for the marketing year to which the effective undermarketings are to be applied.

§ 729.126 Determination of effective farm poundage quota.

The effective farm poundage quota shall be the farm poundage quota adjusted for temporary transfers and effective undermarketings.

§ 729.127 Determination of farm yield.

The farm yield established for a farm for which a farm poundage quota is established for the current year shall be the farm yield established for the farm for the immediately preceding year. If a farm yield is not established for a farm on which a farm poundage quota is established, the county committee shall establish a farm yield in accordance with instructions issued by the Deputy Administrator.

§ 729.128 Determination of farm yield for reconstituted farm.

For reconstitutions which are effective after farm yields have been established the farm yield shall be determined as follows:

(a) *Combination*—(1) *Quota farm.* The farm yield for a combined farm shall be the weighted average of the farm yields for the tracts being combined.

(2) *Quota and nonquota farm.* A combined farm shall be assigned the farm yield of the tract with an established quota if placed in combination with a nonquota tract even though a farm yield previously had been established for such nonquota tract.

(3) *Nonquota farms.* The farm yield for combined nonquota tracts shall be established by the county committee in accordance with § 729.127 even though a farm yield had been previously established for such tracts.

(b) *Divisions*—(1) *No identifiable tracts having tract yield established.* The farm yield shall be the same for each tract as the farm yield for the parent farm.

(2) *Identifiable tracts with tract yield established.* The farm yield shall be the same as the yield which has been previously established for the tract which is divided from the parent farm.

(3) *Division of an identifiable tract having a tract yield established.* The farm yield shall be the same as the yield which has been previously established for the tract which is being divided.

§ 729.129 Approval of farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, preliminary farm poundage quota, farm poundage quota, and effective farm poundage quota shall be determined under the supervision of, and approved by, the county committee of the county in which the farm is administratively located, subject to the concurrence of the State committee or a representative of the State committee. The initial notice of farm poundage quota shall not be mailed to a farm operator until the farm poundage quota has been approved. A revised notice may be mailed without prior approval in any case resulting from: (1) Farm reconstitution that does not require allocation of additional poundage quota; or (2) a transfer by lease, sale, owner or operator of poundage quota.

(b) *Notice to farm operator.* (1) As soon as possible after the farm poundage quota or the effective farm poundage quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If a farm poundage quota is reduced to zero for the current year, the county committee shall mail to the farm operator a notice of such determination.

(3) A revised notice of farm poundage quota or the effective farm poundage quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed or the county committee takes an action which requires a revision of the previously determined quota.

(4) The notice to the operator shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper has an interest in the farm for which the quota is established.

§ 729.130 Erroneous notice of effective farm poundage quota.

If the official notice of effective farm poundage quota issued for a farm erroneously stated a quota larger than the correct effective farm poundage quota, the quota shown on the erroneous notice shall be used as the effective farm poundage quota and shall serve as the basis for marketing penalty computations for the farm for the current marketing year only, if the county committee determines and the State Executive Director concurs that: (1) The error was not so substantial as to place the operator on notice thereof, and (2) the operator was not notified of the correct effective farm poundage quota prior to marketing peanuts as quota peanuts in excess of the correct effective farm poundage quota. Notwithstanding the foregoing, undermarketings for farms for which the erroneous notice of the effective farm poundage quota is applied shall be determined on the basis of the correct effective farm poundage quota for the farm.

§ 729.131 Request for reconsideration or appeal.

Any producer who is dissatisfied with the initial determination of the farm poundage quota or the effective farm poundage quota which is established for such farm may file a request for reconsideration with the county committee in accordance with Part 780 of this chapter. Such request must be filed no later than 15 days after the producer receives the notice of the farm poundage quota or effective farm poundage quota. If after reconsideration the producer remains dissatisfied with the determination, the producer may appeal such determination to the State committee in accordance with Part 780 of this chapter. Determinations rendered by the State committee with respect to the determination of individual farm poundage quotas and effective farm poundage quotas shall be final and there shall be no further administrative appeal.

§ 729.132 Farms with one acre or less of peanuts.

Peanuts produced on a farm on which the acreage of peanuts is one acre or less are eligible to be marketed for domestic edible use provided that all producers that share in the peanuts produced on such farm do not share in the peanuts produced on any other farm.

TRANSFERS OF FARM POUNDAGE QUOTA

§ 729.140 Transfer by sale or lease.

The owner and operator of any farm having a farm poundage quota in the current year is eligible to file a record of transfer for sale or lease of all or any part of the farm poundage quota to any other owner or operator of a farm in the same county. The receiving farm need not have a farm poundage quota. If the owner(s) and operator of the farm from which the transfer by sale or lease is to be made are different persons, each shall execute the record of transfer. However, only the owner(s) or operator of the receiving farm is required to execute the record of transfer.

§ 729.141 Transfer by owner or operator.

The owner or operator of any farm having a farm poundage quota in the current year is eligible to file a record of transfer to transfer the farm poundage quota from such farm to another farm owned or controlled by the applicant: (a) In the same county; or (b) in a county that is contiguous to the transferring county in the same State if the receiving farm had a farm poundage quota established for the 1981 crop.

§ 729.142 Transfer within State.

Notwithstanding the provisions of §§ 729.140 and 729.141, a transfer of a farm poundage quota by sale, lease, owner or operator, may be made to any other farm in the same State, pursuant to instructions issued by the Deputy Administrator, in the States of Arizona, Arkansas, California, Louisiana, Mississippi, Missouri, New Mexico and Tennessee.

§ 729.143 Witness of signatures.

A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distance areas, or are in similar hardship situations, or who may be unduly inconvenienced, may be waived provided the county office mails Form ASCS-375 or such other form approved by the Deputy Administrator to such person for the required signature. In the case of a transfer by sale, such request must be accompanied by a statement signed by all parties to the transaction confirming that the sale has been made.

§ 729.144 Filing transfer agreement and time for filing.

No transfer of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this subpart, has been executed on Form ASCS-375 or such other form approved by the Deputy Administrator and filed within the time periods set forth in this section with the county committee in the county where the farms are administratively located.

(a) *Transfer filed by July 31.* A record of transfer filed after July 31 may be considered filed by July 31 if the county committee, with approval of the State committee, finds that (1) the transfer was agreed upon no later than July 31, and (2) the record of transfer was not filed by July 31 because of conditions beyond the control of the parties to the transfer.

(b) *Transfer filed after July 31.* A transfer filed after July 31 shall not become effective unless filed no later than December 31 of the current year. A record of transfer filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that (1) the transfer was agreed upon no later than December 31, and (2) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

§ 729.145 Maximum period of transfer.

(a) *Owner transfer.* (1) An owner transfer may be approved to a farm owned by such person permanently or temporarily but not beyond the 1985 marketing year.

(2) An owner transfer to a farm controlled by such person may be approved for only one year.

(b) *All other transfers.* Transfers by lease and by operator may only be approved for one year. Multiyear leases and permanent operator transfers shall not be permitted.

§ 729.146 Transfer not to be approved.

The county committee shall not approve:

(a) A transfer of poundage quota by sale if poundage quota was transferred to the farm by sale within the 3 preceding crop years.

(b) Temporary transfers by an operator for more than one year.

(c) Permanent transfers by an operator.

(d) Transfers filed after July 31 for more than 1 marketing year.

(e) Transfers of actual or effective undermarketings.

(f) Transfers of poundage quota to farms with inadequate tillable cropland to produce the poundage quota.

§ 729.147 Transfer of farm poundage quota in eminent domain pool.

A farm poundage quota established prior to December 22, 1981, as a pooled poundage quota or allotment under Part 719 of this chapter may be permanently transferred only during calendar year 1982 by the owner to a farm such person owns. Temporary transfers of pooled quota shall not be approved.

§ 729.148 Consent of lienholder.

A transfer of poundage quota from a farm which the county committee has been informed is subject to a mortgage or other lien shall not be approved unless the transfer is agreed to in writing by the lienholder.

§ 729.149 Transfer to and from a farm (subleasing).

(a) *Transfer filed before July 31.* Generally the county committee shall not approve a transfer which is filed (or considered filed) on or before July 31 if the approval would result in a transfer both to and from the farm during the period ending July 31 of the same crop year. However, a transfer may be approved if a poundage quota is transferred temporarily from a farm for 1 or more years (and the transfer remains in effect) and the farm is subsequently combined with another farm that is otherwise eligible to receive poundage quota by transfer.

(b) *Transfer filed after July 31.* A temporary transfer of poundage quota either to or from the same farm (but not both) may be approved by the county committee if filed after July 31 even though a transfer which was filed on or before July 31 is in effect for the farm provided the producers so certify and the county committee determines that the (1) acreage of peanuts planted on the farm was equal to at least 80 percent of the acreage determined by dividing the effective farm poundage quota by the current farm yield for the farm, and (2) the production of peanuts was limited to less than the effective farm poundage quota because of conditions beyond control of the producer.

§ 729.150 Effect of permanent transfer on determination of farm poundage quota.

The quota, pounds produced, pounds considered produced, pounds transferred and produced on a receiving farm for both the transferring farm and the receiving farm shall be adjusted for the current year and for the 2 preceding years to reflect the applicable increase or decrease in the farm poundage quota and other historic data or farm practices affecting the determination of farm poundage quotas.

§ 729.151 County committee action.

(a) *Approval of transfer.* The county committee shall approve the transfer of poundage quota only if it determines that a timely filed record has been received and that the transfer complies with the requirements of this subpart. A transfer shall not be effective until approved by the county committee. The county committee may delegate authority to the county executive director and to other county office employees to approve transfers of poundge quotas.

(b) *Notice of revised quotas.* A revised notice of farm poundage quota must be issued for each farm affected by the transfer of farm poundage quota.

(c) *Cancellation of transfer.* (1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement or approved due to error by the county committee shall be canceled effective as of the date of approval. However, the cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketings of quota peanuts in excess of the revised effective farm poundage quota.

(2) Where cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for cancellation.

§ 729.152 Withdrawal or minor revision.

Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the program will not be impaired, the county committee may permit withdrawal or minor revisions of a transfer upon written request by all parties to the transfer. However, a temporary transfer may be withdrawn or revised before peanuts are harvested during any year of the agreement, and a permanent transfer may be withdrawn or revised before peanuts are harvested only during the first year of the agreenent.

§ 729.153 Recomputation of previously approved multiple year transfer.

For a multiple year temporary transfer approved after 1982, the county committee shall annually recompute the transfer by limiting the poundage quota transferred to the smaller of: (a) The poundage quota initially transferred, or (b) the farm poundage quota for the transferring farm.

§ 729.154 Amendment of multiple year transfer agreements approved on or before December 22, 1981.

Notwithstanding any other provision in this section, a multiple year temporary transfer approved on or before December 22, 1981, shall not be effective after the 1981 crop year unless an amended record of transfer is filed. The county committee shall notify the operator of both the transferring farm and the receiving farm of the requirement for filing an amended record of transfer in order for the previously filed transfer agreement to remain in effect. The amended record of transfer must be filed at the county ASCS office within 30 days from the date of notification by the county committee that an amended transfer agreement is required. The amended agreement shall be on the basis of the farm poundage quota established for the farm for 1982 and shall be agreed upon and signed by each person whose signature is required and in accordance with the provisions of this subpart.

MARKETING CARDS AND PRODUCER IDENTIFICATION CARDS

AUTHORITY: Agriculture and Food Act of 1981, Pub. L. 97-98 (7 U.S.C. 1281 note).

SOURCE: Sections 729.165 through 729.167, 47 FR 38261, Aug. 31, 1982 (interim rule), and 48 FR 33469, July 22, 1983 (final rule), unless otherwise noted.

§ 729.165 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (ASCS-1002) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced, except that: (1) A card issued for experimental peanuts shall be issued in the name of the experiment station; and (2) a card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the names of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data on marketing card and supplemental card.* (1) Before issuance, the following data and information must be entered on the marketing card in the spaces provided: (i) Effective farm poundage quota; (ii) if applicable, the pounds of additional peanuts contracted and the handler number of the contracting handler; and (iii) if applicable, the converted basic penalty rate determined in accordance with § 729.172(b).

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The balance of the poundage quota from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the poundage quota (not to exceed the balance of poundage quota available) to be assigned to each card.

(4) The face of the marketing card shall show the entry "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase as provided in Part 1446 of this Chapter. Two or more marketing cards may be issued for a farm if the producer wishes to obtain an additional card for purposes of indicating or not indicating "Eligible for Buyback."

(5) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the: (i) name and address of the farm operator; and (ii) State, county code, and farm serial number. If an embossed identification card is not available, the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such time as the peanuts are inspected and an ASCS-1007 has been executed by the inspection service.

(3) After the identification card is returned to the operator, it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen: *Provided,* that the farm operator gives immediate written notice of such fact and furnishes a satisfactory report of the quantity of peanuts which was marketed using the marketing card prior to the time such card was lost, stolen, or destroyed.

§ 729.166 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county office claim record, any marketing card issued for the farm on which the person has an interest as a producer shall bear the notation "U.S. Claim" or "PPQ" (peanut poundage quota) followed by the amount of the indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the notation. A notation showing "PPQ" as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of penalty and accrued interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota liens shall be collected and paid to the Agricultural Stabilization and Conservation Service prior to making collection for any other lien or claim. A notation showing "U.S. Claim" shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan or purchase settlement due the debtor must be paid to the Agricultural Stabilization and Conservation Service. The acceptance and use of a marketing card bearing a notation concerning indebtedness to the United States shall not constitute a waiver by the indebted producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A lien-free or claim-free marketing card shall be issued by the county ASCS office when the lien or claim has been paid.

§ 729.167 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure or alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of the converted basic penalty rate determined in accordance with § 729.172(b), the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall intitial each correction made on the marketing card. An invalid card, if not validated, shall be cancelled and a replacement card shall be issued.

MARKETING PENALTIES

AUTHORITY: Agriculture and Food Act of 1981, Pub. L. 97-98 (7 U.S.C. 1281 note).

SOURCE: Sections 729.171 through 729.179, 47 FR 38262, Aug. 31, 1982 (interim rule), and 48 FR 33469, July 22, 1983 (final rule), unless otherwise noted.

§ 729.171 Basic penalty rate.

The basic penalty rate is 140 percent of the national average support level for quota peanuts, as determined for the marketing year in which the peanuts were produced.

§ 729.172 Peanuts on which penalties are due.

Penalty is due at the basic penalty rate on:

(a) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(b) All peanuts marketed from the farm, if the certified acreage differs from the measured acreage by more than the tolerance provided in Part 718 of this Chapter: *Provided*, that such penalty shall be paid on each lot of peanuts marketed from a farm based on a converted basic penalty rate as shown on the marketing card. The converted basic penalty rate shall be determined by:

(1) Calculating the percentage of incorrect certification; and

(2) Multiplying the percentage by the basic penalty rate per pound.

(c) All peanuts produced on a farm for which the producer:

(1) Failed to certify peanut acreage as provided in Part 718 of this Chapter; or

(2) Refused to permit entry to authorized representatives of the Secretary on the farm for the purpose of determining the acreage of peanuts on the farm.

(d) The quantity of peanuts marketed without identification by a valid marketing card.

(e) The quantity of peanuts falsely identified, as determined by the county committee with State committee concurrence.

(f) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm for domestic edible use in excess of the effective farm poundage quota for that farm.

(g) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted on CCC-1005 between the producer and handler as provided in Part 1446 of this title. Any penalty collected pursuant to this paragraph may be refunded to the extent that the total of all marketings for domestic edible use from the farm for such marketing year do not exceed the farm's effective farm poundage quota.

§ 729.173 Peanuts on which penalties are not to be assessed.

(a) *Error in weight.* Penalty is not due and shall not be collected if the error in net weight as reported on each ASCS-1007, Inspection Certificate and Sales Memorandum, does not exceed one-tenth of 1 percent. However, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size of the error.

(b) *Peanuts grown on State prison farms.* No penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system.

(c) *Peanuts grown for experimental purposes.* (1) No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experiment station and produced at public expense by employees of the experiment station, or peanuts produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station: *Provided,* That the director of the publicly-owned agricultural experiment station must furnish the State Executive Director a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(i) Name and address of the publicly-owned experiment station,

(ii) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only,

(iii) The acreage of peanuts grown on each farm for experimental purposes only, and

(iv) A signed statement that such acreage of peanuts was grown on each farm only for experimental purposes and was necessary for carrying out experimentation, and that the peanuts were produced under the direction of representatives of the publicly-owned experiment station.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts shall not be subject to penalty if the county committee determines, based upon guidelines furnished by the Deputy Administrator, that such peanuts are unique strains, are not commercially available, and are used to plant green peanut acreage.

§ 729.174 Persons to pay penalty.

(a) *Marketings to handlers.* The handler is liable for the penalty due on peanuts which the handler buys or otherwise acquires from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm, the handler and each of the producers on the farm shall be held jointly and severally liable for the amount of the penalty. If the peanuts on which penalty is due were inspected by the Federal-State Inspection Service, the handler's liability for penalty is limited to the value of the lot of peanuts.

(b) *Other marketings.* The producer is liable for the penalty due on any peanuts marketed to persons who are not peanut handlers.

(c) *Penalty for error on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in the effective poundage quota or the pounds contracted in accordance with Part 1446 of this Chapter to be exceeded. If the peanuts on which the penalty was due were inspected by the Federal-

State Inspection Service, the handler's liability for penalty is limited to the value of the lot of peanuts unless the error ultimately resulted in the total marketings of quota peanuts exceeding the farm's effective farm poundage quota.

(d) *Notice to affected parties.* Penalties shown on a farm marketing card shall be deemed to be notice to all affected parties of such penalties. In addition, all affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card.

§ 729.175 Payment of penalty.

(a) A draft, money order, or check made payable to the Agricultural Stabilization and Conservation Service, may be used to pay any penalty, other indebtedness, or interest thereon. A draft or check shall be received subject to collection and payment at face value. The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(b) The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. Interest shall accrue from the date the penalty was due if the penalty is not remitted by Monday of the third calendar week following the week in which the penalty is assessed under § 729.177. For cases of false identification or failure to account, if the penalty is not paid within 15 days after receipt of written notice by the person liable for such penalty, interest shall accrue from the date of receipt of the written notice by such person.

§ 729.176 Lien for penalty.

A lien on the crop of peanuts on which the penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States until the penalty is paid. The lien on a subsequent crop takes precedence over all other claims as of the time the debt is entered on a county claim record in the county ASCS office for the county in which the subsequent crop is grown. Each county ASCS office shall maintain a list of peanut marketing penalty liens on subsequent crops which have been entered on the county claim record. The list shall be available for examination upon written request by an interested person.

§ 729.177 Assessment of penalties.

Any producer, farm operator, or handler against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed has the right to appeal the assessment of the penalty in accordance with §§ 729.178, 729.179.

§ 729.178 Reduction or waiver of penalty.

(a) *General.* The county committee may, in accordance with instructions and guidelines issued by the Deputy Administrator, reduce or waive any penalty required to be assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(b) *Time of reduction or waiver.* The county committee may reduce or waive a penalty either before or after it has been assessed in accordance with § 729.177. In those instances where the county committee makes the reduction or waiver prior to assessment, the notice of assessment issued under § 729.177 shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(c) *Appeal procedure.* Any person against whom a penalty is assessed under this subpart may request that the penalty be reduced or waived in accordance with guidelines issued by the Deputy Administrator and the procedures set forth under § 729.179.

(d) *Review authority.* The Deputy Administrator may, either upon his own motion or in response to appeals which are being taken under § 729.179, require that any determination of a county committee with regard to the reduction or waiver of penalties be reviewed by the State committee or the Deputy Administrator for the purpose of maintaining consistency between different counties in the application of this authority. The Deputy Administrator or the State committee may require a county committee to reverse or otherwise modify its previous determination if the Deputy Administrator or State committee determines that the county committee's previous determination was not made in accordance with the instructions and guidelines issued by the Deputy Administrator. Any person who is adversely affected by any action of the Deputy Administrator or State committee taken under this paragraph may appeal such action by filing a request for reconsideration (or an appeal, if the action was taken by the State committee) with the Deputy Administrator in accordance with Part 780 of this chapter.

§ 729.179 Appeals.

(a) *General.* Any person who is dissatisfied with the penalties assessed by the county committee may file a request for reconsideration with the county committee in accordance with Part 780 of this chapter. Such request must be filed no later than 15 days after the producer receives the notice of assessment issued pursuant to § 729.177. If the producer is dissatisfied with the determination, the producer may appeal such determination to the State committee in accordance with Part 780 of this chapter. If the producer is dissatisfied with the State committee's determination, the producer may request a review of the determination by the Deputy Administrator by filing an appeal with the Deputy Administrator in accordance with Part 780 of this chapter.

(b) *Scope.* In any request for reconsideration or appeal, any adversely affected party may both contest liability for the penalty and, in the alternative, request a reduction or waiver of the penalty.

(c) *Waiver of procedural requirements and delegation of authority.* (1) Nothing herein shall be construed as limiting the authority conferred upon the reviewing authority by Part 780 of this chapter to waive compliance with the procedural requirements for making a request for reconsideration or an appeal.

(2) Nothing contained herein shall preclude the Administrator, ASCS, or his designee, on his own motion, from determining any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determinations made by a State or county committee or the Deputy Administrator.

PRODUCER IDENTIFICATION AND DESIGNATION OF PEANUTS MARKETED

§ 729.186 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card (MQ-76-P or ASCS-1003) and the peanut marketing card (ASCS-1002) which was issued for the farm on which the peanuts were produced.

(Agriculture and Food Act of 1981, Pub. L. 97-98 (7 U.S.C. 1281 note))

[47 FR 38263, Aug. 31, 1982 and 48 FR 33469, July 22, 1983]

§ 729.187 Designation of peanuts.

Any marketing of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota, loan additional, or contract additional as defined in Part 1446 of this chapter. The designation must be made within the time allowed by the handler but not later than the close of inspection on the first workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected. In the absence of a designation, any segregation 1 peanuts shall be marketed in the following order of priority:

(a) As quota peanuts to extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

(Agriculture and Food Act of 1981, Pub. L. 97-98 (7 U.S.C. 1281 note))

[47 FR 38264, Aug. 31, 1982 and 48 FR 33469, July 22, 1983]

PRODUCER RECORDS AND REPORTS

AUTHORITY: Agriculture and Food Act of 1981, Pub. L. 97-98 (7 U.S.C. 1281 note).

SOURCE: Sections 729.188 through 729.192, 47 FR 38264, Aug. 31, 1982 (interim rule), and 48 FR 33469, July 22, 1983, unless otherwise noted.

§ 729.188 Report of marketing green peanuts.

(a) The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form ASCS-1011 at the county ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The number of acres on the farm planted from seed stocks of peanuts;

(2) The acreage on the farm from which peanuts were marketed as green peanuts; and

(3) The name and address of the buyer to or through whom each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed: *Provided, however,* That if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the name and address of each buyer need not be shown but in lieu thereof the place of marketing shall be shown.

(b) Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts produced on the farm which will subject the producer to marketing penalties as set forth in § 729.172.

§ 729.189 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were aquired by purchase or gift, the farm operator shall file a report with the county ASCS office of the acquisition(s) of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made under Part 718 of this title. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmer's stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquision.

(b) Unique strains of peanuts that are not commercially available and retained on a farm to plant 1982 and subsequent crops of green peanuts shall also be reported to the county ASCS office.

§ 729.190 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form ASCS-1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The ASCS-1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an ASCS-1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in § 729.172.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

§ 729.191 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute the certification on the marketing card as to the pounds of peanuts retained for seed or other uses. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for disposition of peanuts marketed from the farm for which marketing penalties may be assessed as provided in § 729.172, unless a satisfactory report of disposition is furnished to the county committee.

§ 729.192 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report of production and disposition of the peanuts grown on the farm to the State committee. The report must be filed on ASCS-1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show:

(1) The final acreage of peanuts on the farm;

(2) The total production of peanuts on the farm; and

(3) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed: *Provided, however,* That where peanuts are marketed in small lots to persons who are not established buyers, the report may be made as either a daily or weekly summary of the number of pounds marketed and while the name and address of the buyer(s) need not be shown, the place of marketing shall be shown; and

(4) The quantity and disposition of peanuts not marketed.

(b) Failure to file the ASCS-1010 as requested or the filing of an ASCS-1010 which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm for which marketing penalties may be assessed, as provided in § 729.172.

HANDLER'S REGISTRATION, RESPONSIBILITIES AND RECORDS

AUTHORITY: Agriculture and Food Act of 1981, Pub. L. 97-98 (7 U.S.C. 1281 note).

SOURCE: Sections 729.196 through 729.202, 47 FR 38265, Aug. 31, 1982 (interim rule), and 48 FR 33469, July 22, 1983 (final rule), unless otherwise noted.

§ 729.196 Registration of handlers.

(a) *Registration requirements.* Each persons who plans to acquire peanuts for processing or resale shall register as a handler in accordance with the provisions of this section prior to the acquisition of any peanuts.

(b) *Persons acquiring noninspected peanuts.* A person who has not registered under the provisions of paragraph (c) of this section and who plans to buy or otherwise acquire peanuts for processing or resale prior to the peanuts being inspected by a duly authorized inspector of the Federal-State Inspection Service must register with the State ASCS office of the State in which the person will operate as a handler, or if operating in more than one State, the State of residence or principal business location. A person may register by completing an MQ-96, Application for Peanut Handler Card, and submitting it to the appropriate State ASCS office.

(c) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing and MQ-96, Application for Peanut Handler Card, and submitting it to the Virginia, Georgia, or Texas State ASCS Office in the marketing area in which the handler is located.

(d) *Peanut buyer card and buying point card.* The office through which a handler registers will issue an embossed peanut buyer card on which will be entered the handler's registration number, name and address. The buyer card will be used by the handler for identification when the handler buys or sells peanuts. A buying point indentification card will be issued by ASCS to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will be embossed with a number and used to identify the physical location of the buying point at which the peanuts are inspected.

§ 729.197 Records and reports required of handlers.

Each handler shall keep records and make reports as required by this section.

(a) *Marketing records.* The handler shall maintain the following records with respect to each lot of farmer's stock peanuts which the handler acquires for his own account.

(1) Farm number (including State and county code) of the farm on which peanuts were produced (obtained from producer's identification card or marketing card), or if purchased from a handler, the handler's number;

(2) Name of seller;

(3) Date of marketing;

(4) Pounds of peanuts marketed as commercial quota or contract additional;

(5) Type of peanuts; and

(6) Amount of penalty due and amount collected from the producer.

(b) *Resales.* Each handler who resells farmer's stock peanuts shall keep records of:

(1) The name and address of the buyer;

(2) The handler number of the buyer if the peanuts are sold to a handler;

(3) The date of the sale;

(4) The type of peanuts sold; and

(5) The pounds (net weight) of peanuts sold.

(c) *Inspected peanuts.* If a lot of peanuts was inspected by the Federal-State Inspection Service, the handler shall complete ASCS-1007, Inspection Certificate and Sales Memorandum, on which the following information must be entered:

(1) Name and address of the farm operator and the State and county code and farm number of the farm on which the peanuts were produced if the peanuts are marketed by the producer, or the handler number if the peanuts are marketed by a handler;

(2) Buying point number assigned to identify the physical location of the buying point at which the peanuts were marketed;

(3) Name, address, and handler number of the handler, or the association number, name and address if the peanuts are accepted for loan through the association;

(4) Net weight of the peanuts;

(5) Quantity of peanuts marketed as either loan quota, loan additional, commercial quota or contract additional;

(6) Date of purchase; and

(7) Amount of penalty collected.

(d) *Noninspected peanuts.* A handler who purchases farmer's stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete ASCS-1030, Report of Purchase of Noninspected Peanuts, for each lot of farmer's stock peanuts purchased. The handler shall complete the ASCS-1030 to show the following:

(1) The name and address of the seller;

(2) Name and address of farm operator and the State and county code and farm number if the peanuts are purchased from the producer of the peanuts, or if the peanuts are purchased from a handler, the ASCS-1030 shall show the handler's name, address, and registration number;

(3) The type of peanut purchased;

(4) The date of purchase;

(5) Quantity purchased; and

(6) Method of determining the weight.

After the required information has been recorded, the Seller shall sign and date the ASCS-1030. The handler shall use ASCS-1030-P, Handler's Report of Purchases of Noninspected Peanuts, to transmit the ASCS-1030 to the State ASC committee in the State in which the handler's business is located. The ASCS-1030's shall be transmitted weekly.

(e) *Marketing Card Entries.* Immediately after each lot of peanuts is marketed, the handler shall make the following entries on the marketing card from the ASCS-1007 or ASCS-1030:

(1) The ASCS-1007 serial number which identifies the lot of peanuts, or the date of marketing if the peanuts were not inspected;

(2) The net pounds marketed;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number or, for loan peanuts, the association number;

(6) For inspected peanuts, the Buying point number;

(7) Type of peanuts marketed; and

(8) Any penalties or claims collected.

(f) *Transmittal of penalties.* Form ASCS-1012 Peanuts, "buyer's Transmittal of Claims and/or Marketing Penalty", shall be used by a handler to transmit a collection of a penalty or a claim. Each collection shall be sent to the county ASCS office which issued the marketing card. The transmittal shall be made within two weeks after the end of the week in which the collection is made.

(g) *Peanuts shelled for a producer.* The handler shall maintain records of peanuts shelled for a producer as follows:

(1) Date of shelling;

(2) Name and address of the producer for whom the peanuts were shelled;

(3) State and county code and farm number of the farm on which the peanuts were produced;

(4) Quantity of peanuts (farmer's stock basis) shelled;

(5) Quantity of shelled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(h) *Peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer as follows:

(1) State and county code and farm number of the farm on which the peanuts were produced;

(2) Name and address of the producer for whom peanuts were dried; and

(3) Quantity dried (weight after drying, farmer's stock basis) and date drying is completed.

(i) *Green peanuts purchased from producer.* Each buyer of green peanuts shall certify on Form ASCS-1011 to the purchase of green peanuts, except small lot purchases such as street sales, local market sales, and grocery store sales. The certification by the buyer to the purchases shall subject the buyer to a review of the purchase and sales records. Any buyer of green peanuts who fails to keep records as required by this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500. Each buyer shall keep the following records of green peanuts purchased:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county code) on the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

§ 729.198 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each business.

§ 729.199 Penalty for failure to keep records and make reports.

Any person, who dries farmer's stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacuturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record as required under this subpart or who makes any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

§ 729.200 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the State Executive Director, or any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General, is authorized to examine any records pertinent to the peanut poundage quota program. Upon request from any such person, any person who dries farmer's stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

§ 729.201 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be requested in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.

§ 729.202 Information confidential.

All data requested and obtained by the Secretary which are required in accordance with the provisions of this subpart shall be kept confidential by all employees of the U.S. Department of Agriculture. Such data shall be released only at the discretion of the Deputy Administrator and then only in a suit or administrative hearing under Title III of the Agricultural Adjustment Act of 1938, as amended.

Subpart—Poundage Quota and Marketing Regulations for 1983 Through 1985 Crops of Peanuts

AUTHORITY: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended, secs. 801, 802, 803, 804, 805, 91 Stat. 944, as amended, 95 Stat. 1248, (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); sec. 108A, 95 Stat. 1254 (7 U.S.C. 1445c-1).

SOURCE: 48 FR 9219, Mar. 4, 1983 (Interim Rule); 49 FR 14284, Apr. 10, 1984 (Final Rule), unless otherwise noted.

GENERAL

§ 729.211 Basis and purpose.

The regulations contained in this subpart are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and are applicable to the 1983 through 1985 crops of peanuts. They govern the establishment of farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, the keeping of records, and the making of reports incident thereto.

§ 729.212 Extent of calculations and rule of fractions.

Computations shall be rounded according to Part 793 of this chapter. The terms set forth below shall be expressed as follows:

(a) Acreage in acres and tenths of acres.

(b) Penalties or damages in dollars and cents.

(c) The quantity of peanuts produced, considered produced and marketed; a preliminary farm poundage quota; a farm poundage quota; an effective farm poundage quota; a farm yield; and an actual yield per acre, in whole pounds.

(d) Factors as a four place decimal except where a different place decimal factor is established by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, (hereinafter referred to as the "Deputy Administrator").

§ 729.213 Definitions.

The definitions in and provisions of Parts 718, 719, and 720 of this chapter are hereby incorporated by reference in these regulations unless the context or subject matter or the provisions of these regulations require otherwise. References to other parts of this chapter or title include any amendments to the referenced parts. Unless the context or subject matter require otherwise, the following words and phrases, as used in this subpart and in all related instructions and forms shall mean:

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Areas.* (1) The southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The southwestern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming and all territories and possessions of the United States not otherwise assigned.

(3) The Virginia-Carolina area consisting of the District of Columbia and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Base period.* The 3 calendar years immediately preceding the year for which a farm poundage quota is being established.

(d) *Buyer.* A person who:

(1) Buys or otherwise acquires peanuts in any form;

(2) Markets, as a commission merchant, broker, cooperative, agent, or in any other capacity, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(3) Receives peanuts as collateral for or in settlement of a price support loan.

(e) *Considered produced.* The number of pounds of peanuts to be considered produced for the current year or for a base period year for use in computing a future farm poundage quota. Considered produced pounds for a farm will be the sum of the pounds (limited to the farm poundage quota less the pounds of peanuts marketed) which:

(1) Were not produced because of a natural disaster as determined by the county committee in accordance with instructions issued by the Deputy Administrator; or

(2) Were equal to the farm poundage quota on a farm where the farm was either purchased, or a transfer by sale was approved, or the farm was acquired by an agency having the right of eminent domain, after the latest normal planting date for peanuts for the county, and only to the extent that such farm poundage quota was produced or otherwise considered produced on the farm to which allocated during the following crop year.

(f) *Cropland.* Land on a farm which is determined by the county committee to be suitable for the production of peanuts and on which a seedbed could have been prepared and a normal crop produced using practices and equipment normally used in the county for planting peanuts. Land not considered suitable includes, but is not limited to, established orchards, vineyards, one-row shelter belts, land seeded to trees, and land being prepared for housing developments, shopping centers, or other noncrop uses as determined by the county committee.

(g) *Crushing.* The processing of peanuts: (1) To extract oil for food uses and meal for feed uses, or (2) into flakes for domestic food uses other than peanut butter, candy, confections or other traditional domestic edible uses.

(h) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Domestic edible use.* Domestic edible use means, for purposes of the regulations found in this part: (1) Use for milling to produce domestic food peanuts (including the processing of peanuts into flakes for traditional domestic edible uses); (2) use of peanuts for seed, excluding unique strains which are not commercially available and which are used for the production of green peanuts; and (3) use of peanuts on a farm.

(j) *Effective farm poundage quota.* The quota determined in accordance with § 729.226.

(k) *Excess peanuts.* The quantity of peanuts marketed or considered marketed for domestic edible use in the current marketing year in excess of the effective farm poundage quota.

(l) *False identification.* False identification shall include the following:

(1) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production; or

(2) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm; or

(3) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm.

(m) *Farm poundage quota.* The quota determined in accordance with § 729.224.

(n) *Farm yield.* The farm yield determined in accordance with § 729.227.

(o) *Farmers stock peanuts.* Dug peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and access moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers.

(p) *Final acreage.* The acreage on the farm from which peanuts are produced as determined and adjusted in accordance with Part 718 of this chapter.

(q) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(r) *Inspector.* A Federal or Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(s) *Loan additional peanuts.* Peanuts which are not eligible for marketings as quota peanuts, are not subject to delivery to fulfill a contract for additional peanuts, and which are pledged as collateral for price support loan at the additionl loan rate.

(t) *Marketed.* To dispose of peanuts (including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form) by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "market", "marketing", and "for market" shall have corresponding meanings to the term "marketed" in the connection in which they are used. The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts, for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to the producer by anyone. Any lot of farmers stock peanuts will be considered as marketed when delivered by the producer to the buyer. Peanuts which are delivered by the producer as collateral for or in settlement of a price support loan will be considered as marketed at the time of delivery. Delivery shall be deemed to have occurred when unloaded at the delivery point. Any peanuts retained on the farm for seed or other use shall be considered marketings of quota peanuts or marketings for domestic edible use.

(u) *Marketing year.* For each crop of peanuts, the period begining August 1 of the current year and ending July 31 of the following year.

(v) *National poundage quota.* 1,167,300 tons for 1983; 1,134,700 tons for 1984; and 1,100,000 tons for 1985.

(w) *Peanuts.* All peanuts produced, excluding: (1) Any peanuts which were not dug or were not picked or threshed before or after marketing from the farm; and (2) any peanuts marketed by the producer for consumption exclusively as boiled peanuts before drying or removal of moisture from such peanuts by natural or artificial means (referred to as "green peanuts"). If a lot of farmers stock peanuts has been inspected by the Federal-State Inspection Service at the time of marketing, the quantity in the lot shall be the gross weight thereof less: (i) Foreign material, and (ii) moisture in excess of 7 percent. If the lot of peanuts is not inspected by the Federal-State Inspection Service, the quantity in the lot shall be the gross weight thereof. If shelled peanuts are marketed by a producer, the quantity in the lot (farmers stock basis) shall be determined by multiplying the poundage of the shelled peanuts by 1.5.

(x) *Planted acreage.* The final acreage of peanuts on a farm determined in accordance with the provisions of Part 718 of this chapter.

(y) *Preliminary farm poundage quota.* The quota determined in accordance with § 729.223.

(z) *Produced.* The total pounds of peanuts dug.

(aa) *Quota peanuts.* Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. This includes all peanuts which are dug on a farm except the following: (1) Green peanuts; (2) peanuts which are placed under loan at the additional support rate and not redeemed by the producer; (3) peanuts which are marketed under a contract between a handler and a producer for exportation and/or crushing.

(bb) *Seed sheller.* A person who in the course of his usual business operations shells peanuts for producers for use as seed for the subsequent year's crop.

(cc) *Segregation 1 peanuts.* A lot of farmers stock peanuts which: (1) Has at least 99 percent peanuts of one type; (2) has not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay; and (3) is free from visible Aspergillus flavus mold.

(dd) *Undermarketings.* The number of pounds determined in accordance with § 729.225.

(ee) *Yield per acre or actual yield.* The actual yield per acre for the farm obtained by dividing the total production of peanuts for the farm by the final acreage of peanuts.

[48 FR 9219, Mar. 4, 1983; 48 FR 19356, Apr. 29, 1983, as amended at 49 FR 44890, Nov. 13, 1984; 50 FR 31585, Aug. 5, 1985]

§ 729.214 Types of peanuts.

The generally known types of peanuts have identifying characteristics as follows:

(a) *Runner type peanuts.* These peanuts are commonly known as African Runner, Alabama Runner, Georgia Runner, Carolina Runner, Wilmington Runner, Dixie Runner, or Runner. They are produced principally in the southeastern peanut producing area of the United States and are identified by the following characteristics: Typically two-seeded pods which are practically cylindrical, medium sized, stem end round and the other pointed with a slight keel having shells fairly thick and strong, with shallow veining and corrugation, and seeds crowed in pod with adjacent ends sharply shouldered.

(b) *Spanish type peanuts.* These peanuts are commonly known as White Spanish, Small Spanish, Medium-Small Spanish, or Spanish. They are produced principally in the southeastern and southwestern peanut producing areas of the United States and are identified by the following general characteristics: Typically two-seeded pods which are small, with both ends rounded, the end opposite the stem having an inconspicuous point or keel, and the waist slender; shells very thin, with veining and corrugation but not deep, and seed globular to oval and practically smooth.

(c) *Valencia type peanuts.* These peanuts are commonly known as New Mexico Valencia, Tennessee Valencia, Tennessee White, Tennessee Red, or Valencia. They are produced principally in Tennessee and New Mexico and are identified by the following general characteristics: Typically three- or four-seeded, and sometimes five-seeded pods which are long and slender, with the end opposite the stem having a definite point or keel with conspicuous veining and corrugation, and seeds globular to oval.

(d) *Virginia type peanuts.* These peanuts are commonly known as Virginia Runner, Virginia Bunch, North Carolina Runner, North Carolina Bunch, Jumbo, or Virginia. They are produced principally in North Carolina, Virginia, northeastern South Carolina, and Tennessee, and are identified by the following general characteristics: Typically two-seeded pods which are of an average size larger than any other type; pods which are roughly cylindrical, with veining and corrugation deep, and seeds are cylindrical with pointed ends, length two or three times diameter, and practically smooth.

§ 729.215 Supervisory authority of State committee.

The State committee shall take any action required to be taken by the county committee which the county committee fails to take. The State committee shall correct or require the county committee to correct any action taken by the county committee which is not in accordance with this subpart. The State committee shall also require the county committee to withhold taking any action which is not in accordance with this subpart.

STATE POUNDAGE QUOTA, FARM POUNDAGE QUOTA, NOTICE TO FARM OPERATOR AND APPEALS

§ 729.220 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out the regulations in this subpart. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator.

§ 729.221 Determination of State poundage quota.

The State poundage quota shall be the State's share of the current year's national poundage quota calculated to equal the percentage of the 1981 national poundage quota allocated to farms in the State.

§ 729.222 Reserves for corrections.

For the purpose of correcting errors, the State committee shall establish a reserve not to exceed 1 percent of the State poundage quota. If the amount of poundage quota necessary to correct errors is in excess of the reserve established by the State committee, such errors may nevertheless be corrected with the approval of the Deputy Administrator. However, the Deputy Administrator may require the State committee to recalculate the farm poundage quotas for all farms in the State if the Deputy Administrator determines that the amount of poundage quota necessary to correct errors is substantially in excess of the reserve. In such case, the State committee shall reissue corrected farm poundage quotas for all farms in the State and such corrected farm poundage quota shall be considered the farm poundage quota for the farm for all purposes.

§ 729.223 Determination of preliminary farm poundage quota.

The preliminary farm poundage quota shall be the farm poundage quota established for the farm for the preceding year.

§ 729.224 Determination of farm poundage quota.

The farm poundage quota shall be the preliminary farm poundage quota adjusted downward for poundage quota reductions as required by this section, plus permanent adjustments from reserves and permanent transfers.

(a) *1983 poundage quota reduction*—(1) *Poundage quota reduction.* For the 1983 crop year, the preliminary farm poundage quota for each farm shall be reduced by the county committee in the following order of priority to the extent necessary, in whole or in part, to accomplish the reduction in the total of the preliminary farm poundage quotas for the State to the State poundage quota less the amount withheld for the reserve for the current marketing year.

(i) *Inadequate tillable cropland.* The preliminary farm poundage quota shall be reduced for a farm to the extent the county committee determines that the farm did not have adequate tillable cropland to produce the farm poundage quota during the preceding crop year. Farms on which there is inadequate tillable cropland as the result of performance of a conservation practice shall not be exempt from poundage quota reductions under this paragraph. If the constitution of the farm differs from the constitution of the farm for the preceding year, an individual determination shall be made for each separately identifiable farm tract as it was constituted during the preceding crop year.

(ii) *Quota not produced.* The preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that the farm poundage quota for such farm was not produced or considered produced during any two years of the base period. If the constitution of the farm differs from the constitution of the farm for any one or more years of the base period, an individual determination shall be made for each separately identifiable farm tract as it was constituted for that year of the base period.

(iii) *Calculation of farm poundage quota reductions under paragraphs* (a)(1)(i) *and* (a)(1)(ii). (A) The amount of the farm poundage quota reduction made under paragraph (a)(1)(i) of this section shall equal the amount of the farm poundage quota that was not produced on the farm during the previous crop year because of inadequate tillable cropland.

(B) The amount of the farm poundage quota reduction made under paragraph (a)(1)(ii) of this section shall equal: (*1*) The preliminary farm poundage quota times the average of the two highest percentages of the farm poundage quota that was not produced or considered produced during two of the three years of the base period minus (*2*) the amount of any reduction under paragraph (a)(1)(i) of this section, to the extent that this subtraction does not bring the reduction to a figure less than zero.

(iv) *Application of State factor.* (A) If the cumulative totals of individual farm poundage quota reductions computed in accordance with paragraph (a)(1)(iii)(A) or (a)(1)(iii)(B) of this section are more than the required reduction (including amounts withheld for the reserve) in the State poundage quota for the 1983 crop year, a uniform State factor shall be determined by the State committee and multiplied times the reductions of farm poundage quotas computed for the farms in the category for which the farm poundage quota reduction exceeds the total of the required reduction for the State, so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for the reserve.

(B) If the cumulative total of individual farm poundage quota reductions computed pursuant to paragraphs (a)(1)(iii) (A) and (B) of this section are less than the required reduction (including amounts withheld for the reserve) in the State poundage quota for the 1983 crop year, a uniform State factor shall be determined by the State committee and multiplied times the preliminary farm poundage quotas on the remaining farms in the State (including those not reduced to zero by reductions made pursuant to paragraphs (a)(1)(iii) (A) and (B) of this section), so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for the reserve.

(2) *Permanent adjustments.* The preliminary farm poundage quota, after adjustments under paragraph (a)(1) of this section, if any, shall also be adjusted by the county committee to reflect permanent transfers or adjustments from reserves as set forth in this subpart.

(b) *1984 and 1985 poundage quota reductions*—(1) *Poundage quota reductions.* For crop years 1984 and 1985, the preliminary farm poundage quota for each farm shall be reduced by the county committee in the following order of priority to the extent necessary, in whole or in part, to accomplish the reduction in the total of the preliminary farm poundage quotas for the State to the State poundage quota less the amount withheld for reserves for the current marketing year.

(i) *Inadequate tillable cropland.* The preliminary farm poundage quota shall be reduced for a farm to the extent the county committee determines that the farm did not have adequate tillable cropland to produce the farm poundage during the preceding crop year. Farms on which there is inadequate tillable cropland as the result of performance of a conservation practice shall not be exempt from poundage quota reductions under this paragraph. If the constitution of the farm differs from the constitution of the farm for the preceding crop year, an individual determination shall be made for each separately identifiable farm tract as it was constituted during the preceding crop year.

(ii) *Quota not produced.* The preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that the farm poundage quota for such farm was not produced or considered produced during any two of the base period years. If the constitution of the farm differs from the constitution of the farm for any one or more of the years of the base period, an individual determination shall be made for each separately identifiable farm tract as it was constituted for that year of the base period.

(iii) *Quota transferred by lease and produced on another farm by a different farm operator.* Except as provided in paragraph (b)(4)(iii)(E) of this section, the preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that any of the following situations apply:

(A) For two or more of the years of the base period, the farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts, i.e., leases filed by the time prescribed in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984; and (*2*) was produced or considered produced on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm; or

(B) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced on the receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm for 2 or more years of the base period; and (*2*) was not 100 percent produced or considered produced in 1 or more of the same base period years.

(C) The farm poundage quota: (*1*) Was not 100 percent produced or considered produced in 2 or more of the years of the base period; (*2*) was transferred, in whole or in part, as a result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced in part on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm in 1 or more of the same base period years.

(D) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for 1983 and 1984 crop years and was produced or considered produced on the receiving farm and the operator of the receiving farm was a different person than the operator of the transferring farm for 1 or more of the base period years; and (*2*) was not 100 percent produced or considered produced in 1 or more of the other base period years.

(E) In applying the provisions of paragraphs (b)(4)(iii) (A) through (D) of this section, if the constitution of the farm differs from the constitution of the farm for any one or more of the base period years, an individual determination shall be made for separately identifiable farm tracts as they were constituted for that year of the base period.

(iv) If a farm received quota by permanent transfer during any year of the base period, an individual determination shall be made for the quota permanently transferred as if such quota was established on a separate farm for each year of the base period.

(2) *Calculation of farm poundage quota reductions for the 1984 and 1985 crop years under paragraphs (b)(1) (i), (ii) and (iii).* (i) The amount of the farm poundage quota reduction made under paragraph (b)(1)(i) of this section shall equal the preliminary farm poundage quota times the percentage of the farm poundage quota that was not produced on the farm during the previous crop year because of inadequate tillable cropland.

(ii) The amount of the farm poundage quota reduction made under paragraph (b)(1)(ii) shall equal: (A) The preliminary farm poundage quota times the average of the two highest percentages of the farm poundage quota that was not produced or considered produced during two of the three base period years, minus (B) the amount of any reduction under paragraph (b)(2)(i) of this section, to the extent that this subtraction does not produce a reduction figure of less than zero.

(iii) The amount of the farm poundage quota reduction made under paragraph (b)(1)(iii) shall equal: (A) The product of the preliminary farm poundage quota times the average of the two highest percentages of the sum of the combined farm poundage quota which, during two of the three base period years, was produced or considered produced by another operator to which the farm poundage quota was transferred by lease and was not produced or considered produced, minus (B) the amount of any reduction calculated under paragraphs (b)(2) (i) and (ii) of this section, to the extent that this subtraction does not produce a reduction figure of less than zero.

(3) *Application of State factor.* (i) If the cumulative totals of individual farm poundage quota reductions computed in accordance with paragraph (b)(2) of this section are more than the required reduction (including amounts withheld for reserves) in the State poundage quota for the current year, a uniform State factor shall be determined by the State committee and multiplied times the reductions of farm poundage quotas computed for the farms in the category for which the farm poundage quota reduction exceeds the total of the required reduction for the State, so as to cause the cumulative total of reductions of

individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for reserves.

(ii) If the cumulative total of individual farm poundage quota reductions computed pursuant to paragraph (b)(2) of this section are less than the required reduction (including amounts withheld for reserves) in the State poundage quota for the current year, a uniform State factor shall be determined by the State committee and multiplied times the preliminary farm poundage quotas on the remaining farms in the State (including those not reduced to zero through reductions computed pursuant to paragraph (b)(2) of this section), so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for reserves.

(4) *Permanent adjustments.* The preliminary farm poundage quota, after adjustments under paragraphs (b) (2) and (3) of this section, if any, shall be adjusted by the county committee to reflect permanent transfers or adjustments from reserves as set forth in this subpart.

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14284, Apr. 10, 1984]

§ 729.225 Determination of undermarketings.

(a) *Actual undermarketings.* Actual undermarketings are the number of pounds by which the total marketings of quota peanuts from the farm during previous marketing years (excluding any marketing year before the marketing year for the 1980 crop) were less than the total amount of the applicable effective farm poundage quotas (disregarding adjustments for undermarketings from prior marketing years) for such marketing years. For purposes of the foregoing sentence, total marketings of quota peanuts for any marketing year shall be the larger of: (1) The total production of segregation 1 peanuts on the farm for such year, or (2) the total amount of quota peanuts which were marketed or considered marketed from the farm. However, the total marketings of quota peanuts for any marketing year shall not exceed the effective farm poundage quota for that farm for such year.

(b) *Effective undermarketings.* (1) If 10 percent of the national poundage quota for the marketing year to which the actual undermarketings are to be applied is equal to or greater than the actual undermarketings on all farms, the effective undermarketings for the farm shall be the same as the actual undermarketings.

(2) If the conditions in paragraph (b)(1) of this section are not applicable, the actual undermarketings will be apportioned to each farm in such manner that the effective undermarketings: (i) Will not be less than the smaller of the actual undermarketings or 10 percent of the farm poundage quota; (ii) will not be more than the actual undermarketings; and (iii) will be apportioned so as to cause, insofar as practicable, the total of the effective undermarketings on all farms to equal 10 percent of the national poundage quota for the marketing year to which the effective undermarketings are to be applied.

§ 729.226 Determination of effective farm poundage quota.

The effective farm poundage quota shall be the farm poundage quota adjusted for temporary transfers and effective undermarketings.

§ 729.227 Determination of farm yield.

The farm yield established for a farm for which a farm poundage quota is established for the current year shall be the farm yield established for the farm for the immediately preceding year. If a farm yield is not established for a farm on which a farm poundage quota is established, the county committee shall establish a farm yield in accordance with instructions issued by the Deputy Administrator.

§ 729.228 Determination of farm yield for reconstituted farm.

For reconstitutions which are effective after farm yields have been established, the farm yield shall be determined as follows:

(a) *Combination*—(1) *Quota farm.* The farm yield for combined quota tracts shall be the weighted average of the farm yields for the tracts being combined.

(2) *Quota and nonquota farm.* A combined farm shall be assigned the farm yield of the tract with an established quota if placed in combination with a nonquota tract even though a farm yield previously had been established for such nonquota tract.

(3) *Nonquota farms.* The farm yield for combined nonquota tracts shall be established by the county committee in accordance with § 729.227 even though a farm yield had been previously established for such tracts.

(b) *Divisions*—(1) *No identifiable tracts having tract yield established.* The farm yield shall be the same for each tract as the farm yield for the parent farm.

(2) *Identifiable tracts with tract yield established.* The farm yield shall be the same as the yield which has been previously established for the tract which is divided from the parent farm.

(3) *Division of an identifiable tract having a tract yield established.* The farm yield shall be the same as the yield which has been previously established for the tract which is being divided.

§ 729.229 Approval of farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, preliminary farm poundage quota, farm poundage quota, and effective farm poundage quota shall be determined under the supervision of, and approved by, the county committee of the county in which the farm is administratively located, subject to the concurrence of the State committee or a representative of the State committee. The initial notice of farm poundage quota shall not be mailed to a farm operator until the farm poundage quota has been approved. A revised notice may be mailed without the aforementioned approval in any case resulting from: (1) A farm reconstitution which does not require allocation of additional poundage quota; or (2) a transfer by lease, sale, owner or operator, of poundage quota.

(b) *Notice to farm operator.* (1) As soon as possible after the farm poundage quota or the effective farm poundage quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If a farm poundage quota is reduced to zero for the current year, the county committee shall mail to the farm operator a notice of such determination.

(3) A revised notice of farm poundage quota or the effective farm poundage quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed or the county committee takes an action which requires a revision of the previously determined quota.

(4) The notice to the operator shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper have an interest in the farm for which the quota is established.

§ 729.230 Erroneous notice of effective farm poundage quota.

If the official notice of effective farm poundage quota issued for a farm erroneously stated a quota larger than the correct effective farm poundage quota, the quota shown on the erroneous notice shall be used as the effective farm poundage quota. Such quota shall serve as the basis for marketing penalty computations for the farm for the current marketing year only if the county committee determines and the State Executive Director concurs that: (a) The error was not so substantial as to place the operator on notice thereof; and (b) the operator was not notified of the correct effective farm poundage quota prior to marketing peanuts as quota peanuts in excess of the correct effective farm poundage quota. Notwithstanding the foregoing, undermarketings for farms for which the erroneous notice of the effective farm poundage quota is applied shall be determined on the basis of the correct effective farm poundage quota for the farm.

§ 729.231 Request for reconsideration or appeal.

Any producer who is dissatisfied with the initial determination of the farm poundage quota or the effective farm poundage quota which is established for such farm may file a request for reconsideration with the county committee in accordance with Part 780 of this chapter. Such request must be filed no later than 15 days after the producer receives the notice of the farm poundage quota or effective farm poundage quota. If after reconsideration the producer remains dissatisfied with the determination, the producer may appeal such determination to the State committee in accordance with Part 780 of this chapter. Determinations rendered by the State committee with respect to the determination of individual farm poundage quotas and effective farm poundage quotas shall be final and there shall be no further administrative appeal.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14284, Apr. 10, 1984]

§ 729.232 Farms with one acre or less of peanuts.

Peanuts produced on a farm on which the acreage of peanuts is one acre or less are eligible to be marketed for domestic edible use provided that all producers that share in the peanuts produced on such farm do not share in the peanuts produced on any other farm.

TRANSFERS OF FARM POUNDAGE QUOTA

§ 729.240 Transfer by sale or lease.

The owner and operator of any farm having a farm poundage quota in the current year is eligible to file a record of transfer for sale or lease of all or any part of the farm poundage quota to any other owner or operator of a farm in the same county. The receiving farm need not have a farm poundage quota. If the owner(s) and operator of the farm from which the transfer by sale or lease is to be made are different persons, each shall execute the record of transfer. However, only the owner(s) or operator of the receiving farm is required to execute the record of transfer.

§ 729.241 Transfer by owner or operator.

The owner or operator of any farm having a farm poundage quota in the current year is eligible to file a record of transfer to transfer the farm poundage quota from such farm to another farm owned or controlled by the applicant: (a) In the same county; or (b) in a county that is contiguous to the transferring county in the same State if the receiving farm had a farm poundage quota established for the 1981 crop.

§ 729.242 Transfer within State.

Notwithstanding the provisions of §§ 729.240 and 729.241, a transfer of a farm poundage quota by sale, lease or by the owner or operator, may be made to any other farm in the same State, pursuant to instructions issued by the Deputy Administrator, in the States of Arizona, Arkansas, California, Louisiana, Mississippi, Missouri, New Mexico and Tennessee.

§ 729.243 Witness of signatures.

A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations, or who may be unduly inconvenienced, may be waived provided the county office mails Form ASCS-375 or such other form approved by the Deputy Administrator to such person for the required signature. In the case of a transfer by sale, such request must be accompanied by a statement signed by all parties to the transaction confirming that the sale has been made.

§ 729.244 Filing record of transfer and time for filing.

No transfer of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this subpart, has been executed on Form ASCS-375 or such other form approved by the Deputy Administrator and filed within the time periods set forth in this section with the county committee in the county where the farms are administratively located.

(a) *Record of transfer filed during the normal planting period (spring transfers.)* In order to be effective during the normal planting period, a record of transfer shall be filed by the date established by the State committee, but not later than June 15. A record of transfer filed after the date established by the State committee but prior to July 1 may be considered to be timely filed if the county committee finds that: (i) The lease was agreed upon no later than the date established by the State committee, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(b) *Record of transfer filed after the normal planting period (fall transfers.)* A record of transfers which is filed after the date established by the State committee for "spring tranfers" pursuant to § 729.244(a) shall not become effective unless filed not later than December 31 of the current year. A record of transfer filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that: (1) The transfer was agreed upon no later than December 31, and (2) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

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[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14284, Apr. 10, 1984; 49 FR 15063, Apr. 17, 1984]

§ 729.245 Maximum period of transfer.

(a) *Owner transfer.* (1) An owner transfer may be approved to a farm owned by such person for a temporary period (but not beyond the 1985 marketing year) or permanently. (2) An owner transfer to a farm controlled by such person may be approved for only one year.

(b) *All other transfers.* Transfers by lease and by operator may only be approved for one year. Multiyear leases and permanent operator transfers shall not be permitted.

§ 729.246 Transfer not to be approved.

The county committee shall not approve:

(a) A transfer of poundage quota by sale if poundage quota was transferred to the transferring farm by sale within the 3 preceding crop years.

(b) Temporary transfers by an operator for more than one year.

(c) Permanent transfers by an operator.

(d) Transfers for more than one marketing year filed after the date established by the State committee for "spring transfers" pursuant to § 729.244(a).

(e) Transfers of actual or effective undermarketings.

(f) Transfers of poundage quota to farms with inadequate tillable cropland to produce the poundage quota.

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14284, Apr. 10, 1984]

§ 729.247 Consent of lienholder.

A transfer of poundage quota from a farm which the county committee has been informed is subject to a mortgage or other lien shall not be approved unless the transfer is agreed to in writing by the lienholder.

§ 729.248 Transfer to and from the same farm (subleasing).

(a) *Record of transfer filed during the normal planting period.* The county committee shall not approve a record of transfer which is filed (or considered filed) on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if the approval would result in a transfer both to and from either the transferring or receiving farm during the period ending on such date of the same crop year, except that in such instance a record of tranfer may be approved if a poundage quota has been transferred temporarily from a farm for one or more years (and the transfer remains in effect) and the farm is combined subsequent to such temporary transfer with another farm that is otherwise eligible to receive poundage quota by transfer.

(b) *Record of transfer filed after the normal planting period.* The county committee shall not approve a temporary transfer of poundage quota which is filed (or considered filed) after the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if it would result in a temporary transfer both to and from the farm during the period beginning on such date and ending on December 31. In order for any transfer filed after the date established by the State committee to be approved by the county committee, the following conditions must be met, as applicable:

(1) *Receiving farm.* The operator of the receiving farm must certify and the county committee must determine that the poundage quota to be transferred is not more than will be required to market the entire production of peanuts from the receiving farm as quota peanuts in the current year.

(2) *Transferring farm.* In those instances where the transferring farm had quota transferred by lease to the farm on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a), the operator of the transferring farm must certify and the county committee must determine that: (i) The acreage of peanuts planted on the transferring farm was equal to at least 80 percent of the acreage determined by dividing the effective farm poundage quota by the larger of the current farm yield or the highest actual yield for the farm in any one of the preceding three years; and (ii) the production of peanuts on the transferring farm was limited to less than the effective farm poundage quota because of conditions beyond the control of the producer.

[49 FR 14285, Apr. 10, 1984]

§ 729.249 Effect of permanent transfer on determination of farm poundage quota.

The quota, pounds produced, pounds considered produced, pounds transferred and produced on a receiving farm for both the transferring farm and the receiving farm shall be adjusted for the current year and for the 2 preceding years to reflect the applicable increase or decrease in the farm poundage quota and other historical data or farm practices affecting the determination of farm poundage quotas.

§ 729.250 County committee action.

(a) *Approval of transfer.* The county committee shall approve the transfer of poundage quota only if it determines that a timely filed record of transfer has been received and that the transfer complies with the requirements of this subpart. A transfer shall not be effective until approved by the county committee. The county committee may delegate authority to the county executive director and to other county office employees to approve transfers of poundage quotas.

(b) *Notice of revised quotas.* A revised notice of farm poundage quota must be issued for each farm affected by the transfer of farm poundage quota.

(c) *Cancellation of transfer.* (1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement or approved due to error by the county committee shall be canceled effective as of the date of approval. However, the cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and (ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketing of quota peanuts in excess of the revised effective farm poundage quota.

(2) Where cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for cancellation.

§ 729.251 Withdrawal or minor revision.

Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the peanut program will not be impaired, the county committee may permit withdrawal or minor revisions of a transfer upon written request by all parties to the transfer. A temporary transfer may be withdrawn or revised before peanuts are harvested during any year of the agreement. A permanent transfer may be withdrawn or revised before peanuts are harvested only during the first year of the agreement.

§ 729.252 Recomputation of previously approved multiple year transfer.

For a multiple year temporary transfer approved on or before December 22, 1981, the county committee shall annually recompute the transfer by limiting the poundage quota transferred to the smaller of: (a) The poundage quota initially transferred, or (b) the farm poundage quota for the transferring farm.

§ 729.253 Amendment of multiple year transfer agreements approved on or before December 22, 1981.

Notwithstanding any other provision in this subpart, a multiple year temporary transfer approved on or before December 22, 1981, shall not be effective for the 1982 through 1985 crop years unless an amended record of transfer is filed. The county committee shall notify the operator of both the transferring farm and the receiving farm of the requirement for filing an amended record of transfer in order for the previously filed transfer agreement to remain in effect. The amended record of transfer must be filed at the county ASCS office within 30 days from the date of notification by the county committee that an amended transfer agreement is required. The amended agreement shall be on the basis of the farm poundage quota established for the applicable crop year.

MARKETING CARDS AND PRODUCER IDENTIFICATION CARDS

§ 729.265 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (ASCS-1002) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced. However, a marketing card issued for experimental peanuts shall be issued in the name of the experiment station and a marketing card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the names of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time the marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data on marketing card and supplemental card.* (1) Before issuance, the following data and information must be entered on the marketing card in the spaces provided: (i) The effective farm poundage quota; (ii) the pounds of additional peanuts contracted and the handler number of the contracting handler, if applicable; and (iii) the converted basic penalty rate determined in accordance with § 729.272(b), if applicable.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm if an original or supplemental marketing card is returned to the county office. The balance of the poundage quota from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the amount of the poundage quota (not to exceed the balance of poundage quota available) which is to be assigned to each card.

(4) The face of the marketing card shall show the entry "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase as provided in Part 1446 of this chapter. Two or more marketing cards may be issued for a farm if the producer wishes to obtain an additional card for purposes of indicating or not indicating "Eligible for Buyback."

(5) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the: (i) Name and address of the farm operator; and (ii) State, county code, and farm serial number. If an embossed identification card is not available, the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such time as the peanuts are inspected and an ASCS-1007 has been executed by the inspection service.

(3) After the identification card is returned to the farm operator, it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen: *Provided,* That the farm operator gives immediate written notice of such fact and furnishes a satisfactory report of the quantity of peanuts which was marketed using the marketing card prior to the time such card was lost, stolen, or destroyed.

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[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.266 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county office claim record, any marketing card issued for the farm on which the person has an interest as a producer shall bear the notation "U.S. Claim" or "PPQ" (peanut poundage quota) followed by the amount of the indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the notation. A notation showing "PPQ" as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of penalty and accrued interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota liens shall be collected and paid to the Agricultural Stabilization and Conservation Service prior to making collection for any other lien or claim. A notation showing "U.S. Claim" shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan or purchase settlement due the debtor must be paid to the Agricultural Stabilization and Conservation Service. The acceptance and use of a marketing card bearing a notation concerning indebtedness to the United States shall not constitute a waiver by the indebted producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A lien-free or claim-free marketing card shall be issued by the county ASCS office when the lien or claim has been paid.

§ 729.267 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure or alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of the converted basic penalty rate determined in accordance with § 729.272(b), the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall initial each correction made on the marketing card. An invalid card, if not validated, shall be canceled and a replacement card shall be issued.

MARKETING PENALTIES

§ 729.271 Basic penalty rate.

The basic penalty rate is 140 percent of the national average support level for quota peanuts, as determined for the marketing year in which the peanuts were produced.

§ 729.272 Peanuts on which penalties are due.

A penalty is due at the basic penalty rate on:

(a) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(b) All peanuts marketed from the farm, if the certified acreage differs from the measured acreage by more than the tolerance provided in Part 718 of this chapter: *Provided,* that such penalty shall be paid on each lot of peanuts marketed from a farm based on a converted basic penalty rate as shown on the marketing card. The converted basic penalty rate shall be determined by: (1) Calculating the percentage of incorrect certification; and (2) multiplying the percentage by the basic penalty rate per pound.

(c) All peanuts produced on a farm for which the producer: (1) Failed to certify peanut acreage as provided in Part 718 of this chapter; or (2) refused to permit entry on the farm to authorized representatives of the Secretary for the purpose of determining the acreage of peanuts on the farm.

(d) The quantity of peanuts marketed without identification by a valid marketing card.

(e) The quantity of peanuts falsely identified, as determined by the county committee with the concurrence of the State committee.

(f) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm for domestic edible use in excess of the effective farm poundage quota for that farm.

(g) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted on CCC-1005 between the producer and handler as provided in Part 1446 of this title of the Code of Federal Regulations. Any penalty collected pursuant to this paragraph may be refunded to the extent that the total of all marketings for domestic edible use from the farm for such marketing year do not exceed the farm's effective farm poundage quota.

§ 729.273 Peanuts on which penalties are not to be assessed.

(a) *Error in weight.* A penalty is not due and shall not be collected if the error in net weight as reported on each ASCS-1007, Inspection Certificate and Sales Memorandum, does not exceed one-tenth of 1 percent. However, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size of the error.

(b) *Peanuts grown on State prison farms.* No penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system.

(c) *Peanuts grown for experimental purposes.* No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experiment station and produced at public expense by employees of the experiment station, or peanuts produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station. However, the director of the publicly-owned agricultural experiment station must furnish the State Executive Director a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(1) Name and address of the publicly-owned experiment station;

(2) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only;

(3) The acreage of peanuts grown on each farm for experimental purposes only; and

(4) A signed statement that such acreage of peanuts was grown on each farm only for experimental purposes and was necessary for carrying out experimentation, and that the peanuts were produced under the direction of representatives of the publicly-owned experiment station.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts shall not be subject to penalty if the county committee determines, based upon guidelines furnished by the Deputy Administrator, that such peanuts are unique strains, are not commercially available, and are used to plant green peanut acreage.

§ 729.274 Persons to pay penalty.

(a) *Marketings to handlers.* The handler is liable for the penalty due on peanuts which the handler buys or otherwise acquires from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm, the handler and each of the producers on the farm shall be held jointly and severally liable for the amount of the penalty.

(b) *Other marketings.* The producer is liable for the penalty due on any peanuts marketed to persons who are not peanut handlers.

(c) *Penalty for error on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in the effective poundage quota or the pounds contracted in accordance with Part 1446 of this chapter to be exceeded.

(d) *Notice to affected parties.* Penalties shown on a farm marketing card shall be deemed to be notice to all affected parties of such penalties in addition to such notice as is by operation of law charged to all parties by the publication of these and all other regulations applicable to the peanut program. Further, all affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card.

§ 729.275 Payment of penalty.

(a) A draft, money order, or check made payable to the Agricultural Stabilization and Conservation Service, may be used to pay any penalty, other indebtedness, or interest thereon. A draft or check shall be received subject to collection and payment at face value. The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(b) The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. Interest shall accrue from the date the penalty was due if the penalty is not remitted by Monday of the third calendar week following the week in which the penalty is assessed in accordance with § 729.277. For cases of false identification or failure to account, if the penalty is not paid within 15 days after receipt of written notice by the person liable for such penalty, interest shall accrue from the date of receipt of the written notice by such person.

§ 729.276 Lien for penalty.

A lien on the crop of peanuts on which the penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States until the penalty is paid. The lien on a subsequent crop takes precedence over all other claims as of the time the debt is entered on a county claim record in the county ASCS office for the county in which the subsequent crop is grown. Each county ASCS office shall maintain a list of peanut marketing penalty liens on subsequent crops which have been entered on the county claim record. The list shall be available for examination upon written request by an interested person.

§ 729.277 Assessment of penalties.

Any producer, farm operator, or handler against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed has the right to appeal the assessment of the penalty in accordance with §§ 729.278 and 729.279.

§ 729.278 Reduction or waiver of penalty.

(a) *General.* The county committee may, in accordance with instructions and guidelines issued by the Deputy Administrator, reduce or waive any penalty required to be assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(b) *Time of reduction or waiver.* The county committee may reduce or waive a penalty either before or after it has been assessed formally in accordance with § 729.277. In those instances where the county committee makes the reduction or waiver prior to formal assessment, the notice of assessment issued under § 729.277 shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(c) *Appeal procedure.* Any person against whom a penalty is assessed under this subpart may request that the penalty be reduced or waived in accordance with instruction and guidelines issued by the Deputy Administrator and the procedures set forth under § 729.279.

(d) *Review authority.* The Deputy Administrator may, either upon his own motion or in response to appeals which are being taken under § 729.279, require that any determination of a county committee with regard to the reduction or waiver of penalties be reviewed by the State committee or the Deputy Administrator for the purpose of maintaining consistency between different counties in the application of this authority. The Deputy Administrator or the State committee may require a county committee to reverse or otherwise modify its previous determination if the Deputy Administrator or State committee determines that the county committee's previous determination was not made in accordance with the instructions and guidelines issued by the Deputy Administrator. Any person who is adversely affected by any action of the Deputy Administrator or State committee taken under this paragraph may appeal such action by filing a request for reconsideration with the State committee or Deputy Administrator, as appropriate, in accordance with the procedures set forth in Part 780 of this chapter.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.279 Appeals.

Any person who is dissatisfied with the penalties assessed by the county committee may file a written request for reconsideration with the county committee in accordance with Part 780 of this chapter. Such request must be filed no later than 15 days after such person receives the notice of assessment issued pursuant to § 729.277. Adverse determinations rendered by the county committee may be appealed administratively in accordance with the procedures set forth in Part 780 of this chapter.

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[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.280 Failure to comply with program.

Any producer who relied on the advice of a representative of the Secretary in rendering performance under this subpart which the producer believed in good faith met the requirements of the program as set forth in these regulations may file a request for review of an adverse county committee ruling in accordance with instructions and guidelines issued by the Deputy Administrator. This authority, however, does not extend to cases where the producer knew or had sufficient reason to know that the action or advice of the representative of the Secretary upon which the producer relied was improper or erroneous, or where the adverse action is based on changes made in the statutory authority of the program or changes in regulations issued for the program.

PRODUCER IDENTIFICATION AND DESIGNATION OF PEANUTS MARKETED

§ 729.286 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card (ASCS-1003) and the peanut marketing card (ASCS-1002) which was issued for the farm on which the peanuts were produced.

(Approved by the Office of Management and Budget under control number 0560-0006)

[49 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.287 Designation of peanuts.

Any marketings of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota, loan additional, or contract additional peanuts as defined in Part 1446 of this chapter. The designation must be made within the time allowed by the handler but not later than the close of inspection of the first workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected. In the absence of a designation, any segregation 1 peanuts shall be marketed in the following order of priority:

(a) As quota peanuts to extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional peanuts to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

PRODUCER RECORDS AND REPORTS

§ 729.290 Report of marketing green peanuts.

(a) The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form ASCS-1011 at the county ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The number of acres on the farm planted from seed stocks of peanuts;

(2) The acreage on the farm from which peanuts were marketed as green peanuts; and

(3) The name and address of the buyer to or through whom each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed. However if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts produced on the farm which will subject the producer to marketing penalties as set forth in § 729.272.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.291 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the farm operator shall file a report with the county ASCS office of the acquisition(s) of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made in accordance with provisions of Part 718 of this chapter. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmer's stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquisition.

(b) Unique strains of peanuts that are not commercially available and are retained on a farm to plant 1983 through 1985 crops of green peanuts shall also be reported to the county ASCS office.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.292 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form ASCS-1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The ASCS-1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an ASCS-1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in § 729.272.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.293 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute the certification on the marketing card as to the pounds of peanuts retained for seed or other use. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for the disposition of peanuts marketed from the farm for which marketing penalties may be assessed as provided in § 729.272, unless a satisfactory report of disposition is furnished to the county committee.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.294 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report of production and disposition of the peanuts grown on the farm to the State committee. The report must be filed on ASCS-1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show:

(1) The final acreage of peanuts on the farm;

(2) The total production of peanuts on the farm; and

(3) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed: *Provided however,* That where peanuts are marketed in small lots to persons who are not established buyers, the report may be made as either a daily or weekly summary of the number of pounds marketed and the place of marketing may be reported in lieu of the name and address of each buyer; and

(4) The quantity and disposition of peanuts not marketed.

(b) Failure to file the ASCS-1010 as requested or the filing of an ASCS-1010 which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm for which marketing penalties may be assessed, as provided in § 729.272.

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[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

HANDLER'S REGISTRATION, RESPONSIBILITIES AND RECORDS

§ 729.300 Registration of handlers.

(a) *Registration requirements.* Each person who plans to acquire peanuts for processing or resale shall register as a handler in accordance with the provisions of this section prior to the acquisition of any peanuts.

(b) *Persons acquiring noninspected peanuts.* A person who has not registered under the provisions of paragraph (c) of this section and who plans to buy or otherwise acquire peanuts for processing or resale prior to the peanuts being inspected by a duly authorized inspector of the Federal-State Inspection Service must register with the State ASCS office of the State in which the person will operate as a handler, or if operating in more than one State, the State of residence or principal business location. A person may register by completing an ASCS-1008, Application for Peanut Handler Card, and submitting it to the appropriate State ASCS office.

(c) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing an ASCS-1008, Application for Peanut Handler Card, and submitting it to the Virginia, Georgia, or Texas State

ASCS Office in the marketing area in which the handler is located.

(d) *Peanut buyer card and buying point card.* The office through which a handler registers will issue an embossed peanut buyer card on which will be entered the handler's registration number, name and address. The buyer card will be used by the handler for identification when the handler buys or sells peanuts. A buying point identification card will be issued by ASCS to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will be embossed with a number and used to identify the physical location of the buying point at which the peanuts are inspected.

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[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.301 Records and reports required of handlers.

Each handler shall keep records and make reports as required by this section.

(a) *Marketing records.* The handler shall maintain the following records with respect to each lot of farmer's stock peanuts which the handler acquires for his own account:

(1) Farm number (including State and county code) of the farm on which peanuts were produced (obtained from producer's identification card or marketing card), or if purchased from a handler, the handler's number;

(2) Name of seller;

(3) Date of marketing;

(4) Pounds of peanuts marketed as commercial quota or contract additional;

(5) Type of peanuts; and

(6) Amount of penalty due and amount collected from the producer.

(b) *Resales.* Each handler who resells farmer's stock peanuts shall keep records of:

(1) The name and address of the buyer;

(2) The handler number of the buyer if the peanuts are sold to a handler;

(3) The date of the sale;

(4) The type of peanuts sold; and

(5) The pounds (net weight) of peanuts sold.

(c) *Inspected peanuts.* If a lot of peanuts was inspected by the Federal-State Inspection Service, the handler shall complete ASCS-1007, Inspection Certificate and Sales Memorandum, on which the following information must be entered:

(1) Name and address of the farm operator and the State and county code and farm number of the farm on which the peanuts were produced if the peanuts are marketed by the producer, or the handler number if the peanuts are marketed by a handler;

(2) Buying point number assigned to identify the physical location of the buying point at which the peanuts were marketed;

(3) Name, address, and handler number of the handler, or the association number, name and address if the peanuts are accepted for loan through the association;

(4) Net weight of the peanuts;

(5) Quantity of peanuts marketed as either loan quota, loan additional, commercial quota or contract additional;

(6) Date of purchase; and

(7) Amount of penalty collected.

(d) *Noninspected peanuts.* A handler who purchases farmer's stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete ASCS-1030, Report of Purchase of Noninspected Peanuts, for each lot of farmer's stock peanuts purchased. The handler shall complete the ASCS-1030 to show the following:

(1) The name and address of the seller;

(2) Name and address of farm operator and the State and county code and farm number if the peanuts are purchased from the producer of the peanuts, or if the peanuts are purchased from a handler, the ASCS-1030 shall show the handler's name, address, and registration number;

(3) The type of peanut purchased;

(4) The date of purchase;

(5) Quantity purchased; and

(6) Method of determining the weight. After the required information has been recorded, the seller shall sign and date the ASCS-1030. The handler

shall use ASCS-1030-P, Handler's Report of Purchases of Noninspected Peanuts, to transmit the ASCS-1030 to the State ASC committee in the State in which the handler's business is located. The ASCS-1030's shall be transmitted weekly.

(e) *Marketing card entries.* Immediately after each lot of peanuts is marketed, the handler shall make the following entries on the marketing card from the ASCS-1007 or ASCS-1030:

(1) The ASCS-1007 serial number which identifies the lot of peanuts, or the date of marketing if the peanuts were not inspected;

(2) The net pounds marketed;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number or, for loan peanuts, the association number;

(6) For inspected peanuts, the buying point number;

(7) Type of peanuts marketed; and

(8) Any penalties or claims collected.

(f) *Transmittal of penalties.* Form ASCS-1012 Peanuts, "Buyer's Transmittal of Claims and/or Marketing Penalty," shall be used by a handler to transmit a collection of a penalty or a claim. Each collection shall be sent to the county ASCS office which issued the marketing card. The transmittal shall be made within two weeks after the end of the week in which the collection is made.

(g) *Peanuts shelled for a producer.* The handler shall maintain records of peanuts shelled for a producer as follows:

(1) Date of shelling;

(2) Name and address of the producer for whom the peanuts were shelled;

(3) State and county code and farm number of the farm on which the peanuts were produced;

(4) Quantity of peanuts (farmer's stock basis) shelled;

(5) Quantity of shelled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(h) *Peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer as follows:

(1) State and county code and farm number of the farm on which the peanuts were produced;

(2) Name and address of the producer for whom peanuts were dried; and

(3) Quantity dried (weight after drying, farmer's stock basis) and date drying is completed.

(i) *Green peanuts purchased from producer.* Each buyer of green peanuts shall report on Form ASCS-1011 the purchase of green peanuts, except small lot purchases such as street sales, local market sales, and grocery store sales. The report of the purchase of green peanuts by the buyer shall subject the buyer to a review of the purchase and sales records. Any buyer of green peanuts who fails to keep records as required by this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500. Each buyer shall keep the following records of green peanuts purchased:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county code) of the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983; 48 FR 20403, May 6, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.302 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each business.

(Approved by the Office of Management and Budget under control number 0560-0006)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.303 Penalty for failure to keep records and make reports.

Any person, who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record as required under this subpart or who makes any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

(Approved by the Office of Management and Budget under control numbers 0560-0003 and 0560-0014)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14285, Apr. 10, 1984]

§ 729.304 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the State Executive Director, or any person authorized by any one of such persons, and any auditor or agent of the Officer of Inspector General, is authorized to examine any records pertinent to the peanut poundage quota program. Upon request from any such person, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14286, Apr. 10, 1984]

§ 729.305 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be requested in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.

§ 729.306 Information confidential.

All data requested and obtained by the Secretary which are required in accordance with the provisions of this subpart shall be kept confidential by all employees of the U.S. Department of Agriculture. Such data shall be released only at the discretion of the Deputy Administrator and then only in a suit or administrative hearing under Title III of the Agricultural Adjustment Act of 1938, as amended.

(Approved by the Office of Management and Budget under control numbers 0560-0003 and 0560-0014)

[48 FR 9219, Mar. 4, 1983, as amended at 49 FR 14286, Apr. 10, 1984]

SUBCHAPTER C—REGULATIONS FOR WAREHOUSES

PART 735—COTTON WAREHOUSES

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268, unless otherwise noted.

SOURCE: 29 FR 15720, Nov. 24, 1964, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

DEFINITIONS

§ 735.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 735.2 Terms defined.

For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator.* The Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(e) *Designated representative.* The Administrator.

(f) *Regulations.* Rules and regulations made under the act by the Secretary.

(g) *Department.* The United States Department of Agriculture.

(h) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(i) *Linters.* As far as applicable the regulations in this part shall include linters.

(j) *Warehouse.* Any building, structure, or other protected inclosure in which cotton is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cotton is or may be stored.

(k) *Warehouseman.* A person lawfully engaged in the business of storing cotton.

(l) *License.* A license issued under the act by the Secretary.

(m) *Licensed warehouseman.* A warehouseman licensed as such under the act.

(n) *Licensed warehouse.* A warehouse for the conduct of which a license has been issued.

(o) *Licensed warehouseman's bond.* A bond required to be given under the act by a licensed warehouseman.

(p) *Licensed classifier.* A person licensed under the act to classify according to grade or otherwise and certificate the grade or other class of cotton.

(q) *Licensed weigher.* A person licensed under the act to weigh and certificate the weight of cotton.

(r) *Cotton examiner.* An officer of the Department of Agriculture designated by the Administrator for the purpose of hearing cotton appeals under §§ 735.75 through 735.85.

(s) *Receipt.* A warehouse receipt.

(t) *Bale.* A bale or other package.

(u) *State.* A State, Territory, or district of the United States.

(v) *Licensed sampler.* A person, employed by a licensed warehouseman, licensed under the act to draw samples from cotton stored in the licensed warehouse at which such person is employed.

(w) *Board of Cotton Examiners.* A board of cotton examiners properly qualified and designated as such under the regulations (Part 28 of this chapter) under the United States Cotton Standards Act.

[29 FR 15720, Nov. 24, 1964. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 735.3 Application forms.

Applications for licenses under sections 4 and 9 of the act and for amendments of licenses under section 5 of the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application.

§ 735.3a All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of cotton by an applicant for a warehouse license must qualify for a license and be licensed under the act if the applicant is to be licensed to operate as a cotton warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Secretary or his designated representative upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of nonfederally licensed facilities, there would be no likelihood of interchange or substitution of cotton stored in such facilities with cotton stored in the federally licensed facilities. If all such facilities do not qualify for a license or for an exemption under this section, the applicant shall not be licensed under the act as a cotton warehouseman in the city or town in which the facilities in question are located. Each applicant for a warehouse license must apply for a license covering all facilities operated by him for the storage of cotton within the same city or town or for exemption as provided in this section. If a licensed cotton warehouseman acquires any additional cotton storage facilities within the same city or town in which his licensed warehouse is located, he shall file promptly an application for a license or an exemption of the additional facilities. No cotton storage facility acquired by a licensed cotton warehouseman, subsequent to the issuance of his license, in the same city or town as his licensed facilities, shall be used for the storage of cotton until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed cotton storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of cotton until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of cotton by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of cotton.

§ 735.4 Grounds for not issuing a license.

A license for the conduct of a warehouse, or any amendment to a license, under the regulations in this part, shall not be issued if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of cotton; that the warehouseman does not possess a good reputation, or does not have a net worth of at least $10,000.00, or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part; or that there is any other sufficient reason within the intent of the act for not issuing such license. If all the facilities operated for the storage of cotton by the applicant within the same city or town are not to be licensed under the act, the applicant shall not be licensed as a cotton warehouseman with respect to any of such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in § 735.3a.

§ 735.5 Net assets required.

(a) Each warehouseman conducting a warehouse licensed, or for which application for license has been made, under the regulations in this part, shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, equal to at least $5.00 per bale for the maximum number of bales that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator: *Provided,* That the amount of such net assets shall not be less than $10,000.00, and need not be more than $100,000.00: *And provided further,* That any deficiency in the net assets required above the $10,000.00 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 735.12(b). In case such a warehouseman has applied for licenses to conduct two or more warehouses in the same state, and his total assets are subject ot the liabilities of each warehouse, such warehouses shall be deemed to be one warehouse for the purposes of determining the net assets required under this section. In determining total net assets, credit may be given for insurable property such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. Such insurance shall be in the form of lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the state in which the warehouse is located. For the purposes of this section only, capital stock as such shall not be considered a liability.

(b) In case a state agency, licensed or applying for a license as provided in section 9 of the act, has funds of not less than $500,000.00 guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be considered sufficient to meet the maximum net asset requirements of this section.

§ 735.6 License shall be posted.

Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.

§ 735.7 Suspension or revocation of warehouse licenses.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a warehouseman when such warehouseman:

(a) Does not have a net worth of at least $10,000.00;

(b) Has parted, in whole or in part, with his control over the licensed warehouse;

(c) Is in process of dissolution or has been dissolved;

(d) Has ceased to conduct such licensed warehouse;

(e) Has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse;

(f) Has made unreasonable or exorbitant charges for services rendered;

(g) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of cotton which is not covered by a license or an exemption as provided in § 735.3a; or

(h) Has in any other manner violated or failed to comply with any provision of the act or the regulations in this part. Whenever any of the conditions mentioned in paragraphs (a) through (h) of this section shall come into existence, it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked or suspended (other than temporarily pending investigation) for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 735.89.

§ 735.8 Return of suspended or revoked warehouse license.

In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 735.6; or in the discretion of the Administrator a new license may be issued.

§ 735.9 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.

§ 735.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 735.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of one year commencing ————, or until the termination of said license(s) in the event of termination prior to the end of the one year period, all obligations of a licensed warehouseman under the terms of the act and regulations thereunder relating to the above-named products; and

Faithfully perform during said one year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said one year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the act and regulations and contracts shall include obligations under any and all modifications of the act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

§ 735.12 Amount of bond; additional amounts.

(a) The amount of bond to be furnished by each warehouseman under the regulations in this part shall be at the rate of $5 per bale for the maximum number of bales that his warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator, but not less than $5,000 nor more than $100,000, except as provided in paragraphs (b) and (c) of this section. In case a warehouseman has applied for licenses to operate two or more warehouses in the same State under the regulations in this part, and his total assets are subject to the liabilities of each warehouse, he may, if he desires, give a single bond meeting the requirements of the act and the regulations in this part to cover all such warehouses and such warehouses shall be deemed to be one warehouse for the purposes of such bond.

(b) In case of a deficiency in net assets above the $10,000 minimum, required under § 735.5, there shall be added to the amount of the bond determined in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) In case the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount of the bond determined in accordance with paragraphs (a) and (b) of this section, a further amount fixed by him, to meet such conditions.

§ 735.13 Amendment to license.

In case an application is made under § 735.3 for an amendment to a license and no bond previously filed by the warehouseman covers obligations arising under such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within the time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part may be filed in lieu of a new bond.

§ 735.14 New bond required each year.

Whenever a license has been issued for a period longer than one year, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary, or his designated representative, prior to the date on which said license would have expired had it been issued for but one year, subject to the provisions of § 735.13.

§ 735.15 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary, or his designated representative.

WAREHOUSE RECEIPTS

§ 735.16 Form.

(a) Every receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following:

(1) The name of the licensed warehouseman and the designation, if any, of the warehouse;

(2) The license number of the warehouse;

(3) A statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws;

(4) In the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship;

(5) The tag number given to each bale of cotton in accordance with § 735.31;

(6) A statement conspicuously placed, whether or not the cotton is insured, and if insured, to what extent, by the warehouseman, against loss or damage by fire, lightning and other risks;

(7) The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon;

(8) A blank space designated for the purpose in which the grade and/or other classification may be stated; and

(9) A statement to the effect that the weight was determined by a weigher licensed under the U.S. Warehouse Act, except that if the weight is not so determined, as permitted in § 735.38, the receipt shall contain a statement to that effect.

(b) Except as to warehouse receipts issued on or before August 30, 1944, or when an expiration date authorized by the Department is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every nonnegotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: *Provided*, That nothing contained in this section shall prohibit a warehouseman from legally selling the cotton when his accrued storage and other charges approach the current market value of the cotton.

(c) In addition to complying with paragraphs (a) and (b) of this section, every negotiable receipt issued for cotton stored in a licensed warehouse shall embody within its written or printed terms a statement that the cotton covered by such receipt was classified by a licensed classifier or a board of cotton examiners when such cotton is so classified.

(d) Whenever the grade or other class of the cotton is stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class shall be determined by a licensed classifier or a board of cotton examiners upon the basis of a sample drawn in accordance with § 735.71, and shall be stated in the receipt in accordance with §§ 735.68 through 735.74.

(e) If a warehouseman issue a receipt omitting the statement of grade on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) Licensed receipts issued to cover linters shall be clearly and conspicuously marked "Linters".

(g) If a warehouseman issue a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

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[29 FR 15720, Nov. 24, 1964, as amended at 33 FR 14699, Oct. 2, 1968; 37 FR 12920, June 30, 1972; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, January 14, 1985]

§ 735.17 Copies of receipts.

(a) At least one actual, skeleton, or microfilm copy of all receipts shall be made, and all copies, except skeleton and microfilm copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable."

(b) A copy of each receipt issued shall be retained by the warehouseman for a period of 1 year after December 31 of the year in which the corresponding original receipt is canceled.

(c) If copies are retained on microfilm, the warehouseman shall:

(1) Have available at all times facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange, index, and file the films in such a manner as to permit the immediate location of any particular microfilm record; and

(3) Be ready at all times to provide, and immediately provide, at the expense of the warehouseman, any facsimile enlargement of such microfilm copies which any authorized officers or agents of the Department of Agriculture may request.

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[37 FR 12920, June 30, 1972, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the cotton represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 735.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is (a) in a form prescribed by the Administrator, (b) upon distinctive paper or card stock specified by the Administrator, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper, or on card stock distinctively tinted with fugitive ink by the printer in the manner prescribed by the contract under paragraph (c) of this section.

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[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.20 Partial delivery of cotton.

If a warehouseman delivers a part only of a lot of cotton for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the cotton.

§ 735.21 Return of receipts before delivery of cotton.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the act until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written delivery order, properly signed, specifying by bale or tag number each bale to be delivered from any receipt or receipts. Before delivering, or upon delivery of, all the cotton covered by a nonnegotiable warehouse receipt, the warehouseman may require the surrender of the receipt. The location where receipts are to be surrendered shall be a location within reasonable proximity of the warehouse where the cotton is stored or other location that would not interfere with enforcement of the Act and regulations.

[37 FR 12920, June 30, 1972. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.22 Omission of grade; no compulsion by warehouseman.

No licensed warehouseman shall, directly or indirectly by any means whatever, compel or attempt to compel the depositor of any cotton in his warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 735.23 Insurance; requirements.

(a) When requested in writing by the depositor of cotton in a licensed warehouse, or by the holder of the receipt covering such cotton, to insure such cotton against loss or damage by fire, lightning, and other risks, each licensed warehouseman shall secure in his own name such insurance under reporting forms of policies which automatically attach for the full value of such cotton, including daily changes of value through market fluctuations and changes in the quantity of such product from day to day, as soon as such cotton is placed in his legal custody, and he shall continue such insurance in effect so long as the cotton remains in his legal custody. Such insurance shall be covered by lawful policies issued by one or more insurance companies. Each warehouseman insuring cotton under the provisions of this section shall submit such reports to underwriters as may be required under the terms of such policies, and copies of such reports shall be submitted to the Department as it may require. If the warehouseman is unable to procure insurance to the extent requested, he shall, orally or by telegraph or by telephone, and at his own expense, immediately notify the person making the request of such fact. When insurance is not carried in the warehouseman's name, the receipt shall show that the cotton is not insured by the warehouseman. Nothing in this section shall be construed to prevent a licensed warehouseman from adopting a rule that he will insure all cotton stored in his warehouse, but if he elects to insure he shall accomplish such insurance through policies as above specified.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 735.6, and at such other place as the Administrator or his representative may from time to time designate, a notice, stating briefly the conditions under which the cotton will be insured against loss or damage by fire, lightning, and other risks.

§ 735.24 Premiums; inspections; reports.

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 735.25 Warehouseman to collect and pay over insurance.

Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 735.26 Care of cotton in licensed warehouse.

Each warehouseman shall at all times exercise such care in regard to cotton in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

§ 735.27 Care of other cotton and other commodities.

If, at any time, a warehouseman shall handle or store cotton otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cotton in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the act and the regulations in this part. Nonlicensed cotton shall be kept separate from licensed cotton.

§ 735.28 Records to be kept in safe place.

(a) Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued, and canceled receipts or microfilm copies of canceled receipts except that with the written consent of the Administrator or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment he may keep such records, books, and papers in some other place of safety, approved by the Administrator or his representative.

(b) Each canceled receipt or microfilm copy of each canceled receipt shall be retained by the warehouseman for a period of 6 years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(c) Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

(d) If microfilm copies of canceled receipts are to be retained in lieu of canceled receipts, the warehouseman shall:

(1) Have available at all times facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange, index, and file the films in such a manner as to permit the immediate location of any particular microfilm copy; and,

(3) Be ready at all times to provide, and immediately provide, at the expense of the warehouseman, any facsimile enlargement of such microfilm copies which any authorized officers or agents of the Department of Agriculture may request.

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[37 FR 12920, June 30, 1972, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.29 Warehouse charges.

A licensed warehouseman shall not make any unreasonable, exorbitant, or discriminatory charge for services rendered. Before a license to conduct a warehouse is granted under the act, the warehousemen shall file with the Department a copy of his rules, if any, and a schedule of the charges to be made by him if licensed. Effective at the beginning of any cotton season, a licensed warehouseman may change his rate of charges for storage and other services, and the new rates may apply to all cotton then in storage as well as cotton received thereafter. At or before the beginning of each season every licensed warehouseman shall file with the Department a copy of his rules, if any, and of his schedule of charges for the ensuing season. Should a licensed warehouseman wish to make changes in his rates to become effective at any time other than at the beginning of a season, he shall file with the Department an amended schedule showing the contemplated changes, accompanied by a statement setting forth the reasons therefor. No increase in the storage rate shown in such an amended schedule shall apply to cotton in storage at the time the changes become effective. A licensed warehouseman may demand payment of all accrued charges at the close of each cotton season. If, upon demand, the owner of the cotton refuses to pay such charges at the end of a season, the warehouseman may take such action to enforce collection of his charges as is permitted by the laws of the State in which the warehouse is located. Each licensed warehouseman shall keep a copy of his current rules and schedule of charges exposed conspicuously in the place prescribed by § 735.6 and at such other place accessible to the public as the Secretary or his designated representative may from time to time designate. For the purposes of this section the cotton season shall commence, with respect to each warehouse, at such time not later than September 1 of each year, as the operator of the warehouse shall select, and he shall notify the Department in writing not less than five days next preceding the date selected.

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 35751, Aug. 17, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.30 Business hours.

(a) Each licensed warehouse shall be kept open for the purpose of receiving cotton for storage and delivering cotton out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cotton stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

§ 735.31 Numbered tags to be attached to bales.

Each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto a numbered tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet or eyelets, and be attached to the bale with a flexible, rustproof wire, or shall be made of such other material and attached by such other means as shall be approved by the Administrator or his representative. The tags shall be attached in numerical sequence or any series of sequence clearly distinguishable from each other.

§ 735.32 Arrangement of stored cotton.

(a) Each warehouseman shall store each bale of cotton for which a receipt under the act has been issued so that the tag thereon, required by § 735.31 is visible and readily accessible, except as provided in paragraph (b) of this section, and shall arrange all other cotton in his licensed warehouse so as to permit an accurate check thereof.

(b) If any licensed warehouseman is tendered for storage cotton of same grade and staple and in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in lots without reference to visibility of all tags on all bales within any lot, the warehouseman may store such cotton of same grade and staple belonging to the same depositor in lots of not less than 25 bales nor more than 200 bales: *Provided, however,* That each bale entering into the lot must bear an individual identification tag, and each lot must be so stored that the number of bales within the lot may be accurately determined.

(c) An identification card or tag shall be attached by the ware- houseman to each lot of cotton which shall show the lot number and the number of bales in the lot. The warehouseman shall also maintain an office record showing bale or tag number of each bale in the lot and the location of the lot in the warehouse. Each lot shall be so arranged as to be readily distinguishable from each and every other lot. When requested by a proper representative of the Department of Agriculture engaged in making an examination of the warehouse, the warehouseman shall tear or break down at his own expense such stacks or lots of cotton as the examiner deems necessary to a proper examination. Before any warehouseman undertakes to store in accordance with this section he shall submit a statement setting forth: (1) His reasons for desiring to avail himself of this section and (2) the plan of storage he proposes to follow, and he shall secure prior permission from the Secretary or his designated representative to practice such method of storage.

§ 735.33 System of accounts.

Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Service, which shall show for each bale of cotton the tag number mentioned in § 735.31, its weight, its class when its class is required to be, or is, ascertained, its location, the dates received for, and delivered out of, storage, and the receipts issued and canceled, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.34 Reports.

Each licensed warehouseman shall, from time to time, when requested by the Administrator, or his representative, make such reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse as the Administrator may require.

§ 735.35 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his canceled receipts for auditing to such field offices of the Service as may be designated from time to time. For the purpose of this section, only such portion as the Service may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

§ 735.36 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

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[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.37 Inspections and examinations of warehouses.

Each licensed warehouseman shall permit any officer or agent of the Department, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this section.

§ 735.38 Weighing of cotton; weighing apparatus.

(a) All cotton before being stored in a licensed warehouse, shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt; except that by agreement with the depositor, point of origin weights may be stated on the receipt for cotton tendered for storage in a lot the identity of which is to be preserved during storage and shipment from the warehouse, and for which a multiple bale receipt is to be issued: *Provided*, That if such lot is broken at the warehouse, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

(b) Each licensed warehouse shall be equipped with scales acceptable to the Department for weighing cotton into and out of the warehouse. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cotton stored in a licensed warehouse, shall be subject to examination by an officer or agent of the Department designated by the Administrator for the purpose. If the Department shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cotton for the purposes of the act and the regulations in this part.

[33 FR 14699, Oct. 2, 1968. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.39 Loose cotton.

Each warehouseman shall keep his warehouse reasonably free of loose cotton, except in a space or container separate and apart from other cotton.

§ 735.40 Excess storage.

If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof determined in accordance with § 735.12, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper use of sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Administrator of such excess storage and arrangement thereof.

§ 735.41 Removal of cotton from storage.

Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any cotton, for storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall cotton be removed from the warehouse, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

§ 735.42 Storage of wet and fire-damaged cotton.

A warehouseman shall not place any bale of cotton that is excessively wet in contact with any other cotton in the licensed warehouse. A warehouseman shall not store in the same compartment with cotton that has not been damaged by fire any cotton that has been damaged by fire until the risk of fire therein has passed and the fire-damaged cotton has been removed from the bale, and then he shall not store it in contact with cotton that has not been so damaged.

§ 735.43 Cotton handling; storage; injuries.

A warehouseman shall not handle or store cotton in such manner as will injure or damage it, or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise.

§ 735.44 Fire loss to be reported by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Administrator the occurrence of such fire and the extent of damage.

§ 735.45 Signatures on receipts to be filed with Department.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.

§ 735.46 Signs on field warehouses.

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "Public Warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the act and the regulations in this part subject to the approval of the Service.

(d) Immediately upon the expiration or suspension or revocation of a license all signs required under this section shall be removed from the warehouse.

(e) No sign other than that required by this section shall remain on a licensed warehouse.

§ 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. The licensed warehouseman shall also keep a copy of each Form A memorandum and Form C certificate issued by a board of cotton examiners which forms a basis of any receipt issued by the warehouseman. All certificates and memoranda within this section shall be retained in the records of the licensed warehouseman for a period of one year after December 31 of the year in which the receipt based on such certificates or memoranda is canceled.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985

§ 735.48 Drawing of samples.

Each warehouseman shall have in his employ at all times one or more licensed samplers whose duty it shall be to draw samples from any cotton stored or to be stored in the licensed warehouse if the owner of such cotton or any person having a legal right to have such cotton sampled requests that samples be drawn. When directed by the Administrator such requests shall be in writing. Such samplers shall perform their duties under the supervision and at the direction of the licensed warehouseman and the samples shall be drawn in accordance with § 735.72.

§ 735.49 Samples; drawing and marking; how.

All samples drawn from cotton in the custody of a licensed warehouseman for storage in a licensed warehouse shall be drawn by licensed samplers in the employ of the licensed warehouseman and at his direction and under his supervision, except when they are drawn as provided in § 735.79 or are drawn by or under the direction of a cotton exchange inspection agency in accordance with the regulations in Part 27 of this chapter under the cotton futures legislation (26 U.S.C. 4851 et seq.) or are drawn under the supervision of a Cotton Division employee in accordance with the regulations in Part 28 of this chapter under the United States Cotton Standards Act (7 U.S.C. 51 et seq.). Each sample shall be appropriately marked to show the tag number of the bale of cotton from which it was drawn and the date of sampling. A record of the sampling, including the written request, if any, of the owner of the cotton or the person having a legal right to have such cotton sampled, shall be kept by the licensed warehouseman as a part of the warehouse records, for a period of one year after December 31 of the year in which such cotton is removed from the warehouse.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985

Cross Reference: For regulations under the Cotton Futures Act and the Cotton

Standards Act, see 7 CFR Parts 27 and 28 of this chapter.

FEES

§ 735.50 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to classify, sample, or weigh agricultural products stored or to be stored under provisions of this act.

[49 FR 3640, Jan. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.51 Warehouse inspection fee.

There shall be charged and collected for each original examination or inspection, or reexamination or reinspection of a warehouse under the Act a fee at the rate of $50 for each 1,000 bales of storage capacity, or fraction thereof, determined in accordance with § 735.5, but in no case less than $100 nor more than $1,000.

[49 FR 3640, Jan. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.52 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, pursuant to the regulation in this part, the applicant or licensee shall deposit with the service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[49 FR 3640, Jan. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.53 Return of excess deposit.

The Service shall hold in its custody each advance deposit made under § 735.52 until the fee, if any, is assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

[49 FR 3640, Jan. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

LICENSED CLASSIFIERS AND LICENSED WEIGHERS

§ 735.54 Sampler's, classifier's, and weigher's applications.

(a) Applications for licenses to sample, classify and/or weigh cotton under section 11 of the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him, under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by—

(1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the act, in which cotton sought to be sampled, classified and/or weighed under such license is or may be stored;

(2) A statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose;

(3) Satisfactory evidence that he is competent to sample, classify and/or weigh cotton;

(4) A statement by the applicant that he agrees to comply with and abide by the terms of the act and the regulations in this part so far as the same may relate to him; and

(5) Such other information as the Administrator may deem necessary:

Provided, That when an application for a license to classify cotton is filed by a person who does not intend to classify cotton for any particular licensed warehouseman but who does intend to classify cotton stored or to be stored in a licensed warehouse and to issue class certificates therefor, as provided for by the act and the regulations in this part, independent of the warehouse receipts issued to cover such cotton, it shall not be necessary to furnish such statement as is required in this paragraph.

(c) For the purpose of classifying cotton under the regulations in this part, each licensed classifier who holds an unsuspended or unrevoked license under the Cotton Standards Act of March 4, 1923, and regulations thereunder to classify cotton and certificate the grade thereof shall be deemed competent and a license may be issued to him under the United States Warehouse Act upon furnishing the information required by paragraph (b) of this section except as specified in paragraph (c)(3) of this section.

(d) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(e) A single application may be made by any person for a license as a sampler, classifier and weigher upon complying with all the requirements of this section.

§ 735.55 Examination of applicant.

Each applicant for a license as a sampler, classifier and/or weigher and each licensed sampler, classifier and/or weigher shall, whenever requested by an authorized agent of the Department designated by the Administrator, for the purpose, submit to an examination or test to show his ability to properly sample, classify or weigh cotton, as the case may be, and shall also make available for inspection copies of the standards of classification or the weighing apparatus as the case may be, used or to be used by him.

§ 735.56 Posting of license.

Each licensed classifier shall keep his license conspicuously posted in the office where all or most of the classifying is done, and each licensed sampler and/or weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by a representative of the Service.

§ 735.57 Duties of sampler, classifier and weigher.

Each licensed classifier or weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, classify or weigh and certificate the class or weight, respectively, of cotton stored or to be stored in a licensed warehouse to which his license applies, if such cotton is offered to him under such conditions as permit the proper performance of such functions; except that no class or weight certificate need be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination thereof. Each licensed sampler shall sample cotton stored or to be stored in a licensed warehouse for which he holds a license, in accordance with § 735.48. Each licensed sampler, classifier, and weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No class or weight certificate shall be issued under the act for cotton not in the custody of a licensed warehouseman for purposes of storage in a licensed warehouse, nor shall cotton not in the custody of such a warehouseman for such purpose be sampled by a licensed sampler acting as such.

§ 735.58 Class certificates; form.

(a) Each class certificate issued under the act by a licensed classifier shall be in a form approved for the purpose by the Administrator, and shall embody within its written or printed terms:

(1) The caption "Cotton class certificate";

(2) Whether it is an original, a duplicate, or other copy;

(3) The name and location of the licensed warehouse in which the cotton is or is to be stored;

(4) The date of the certificate;

(5) The location of the cotton at the time of classification;

(6) The identification of each bale of cotton by the tag number given to the bale in accordance with § 735.31 or if there be no such tag number by other marks or numbers;

(7) The grade or other class, except length of staple, of each bale of cotton covered by the certificate, in accordance with §§ 735.68 through 735.73, as far as applicable, and the standard or

description in accordance with which the classification is made;

(8) A blank space designated for the purpose in which the length of staple may be stated;

(9) That the certificate is issued by a licensed classifier under the United States Warehouse Act and regulations thereunder; and

(10) The signature of the licensed classifier.

In addition, the class certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

(b) Form A memorandums and Form C certificates issued by a board of cotton examiners and class certificates issued by licensed classers under the United States Cotton Standards Act (7 U.S.C. 51 et seq.) shall be deemed sufficient for the purposes of the United States Warehouse Act and the regulations in this part, if the samples on which they are based were drawn in accordance with applicable requirements of § 735.71, and, in case of a class certificate issued by such a licensed classer, if the classer holds an unsuspended and unrevoked license under each of said acts.

§ 735.59 Weight certificates; form.

Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the Administrator, and shall embody within its written or printed terms:

(a) The caption "Cotton weight certificate";

(b) Whether it is an original, a duplicate, or other copy;

(c) The name and location of the licensed warehouse in which the cotton is or is to be stored;

(d) The date of the certificate;

(e) The location of the cotton at the time of weighing;

(f) The identification of each bale of cotton by the tag number given to the bale in accordance with § 735.31 or if there be no such tag number by other marks or numbers;

(g) The gross, or net and tare, weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition;

(h) That the certificate is issued by a licensed weigher under the United States Warehouse Act and the regulations thereunder; and

(i) The signature of such licensed weigher.

In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

[29 FR 15720, Nov. 24, 1964, as amended at 37 FR 12920, June 30, 1972. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.60 Combined class and weight certificates.

The class and weight of any cotton, ascertained by a licensed classifier and a licensed weigher, may be stated on a certificate meeting the combined requirements of §§ 735.58 and 735.59 if the form of such certificate shall have been approved for the purpose by the Administrator.

§ 735.61 Copies of certificates to be kept.

Each licensed classifier and each licensed weigher shall keep for a period of one year in a place accessible to interested persons a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cotton covered by the certificate is stored.

§ 735.62 Licensees to permit and assist in inspection.

Each licensed sampler, classifier, and/or weigher shall permit any officer or agent of the Department authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 735.37 as far as any such inspection or examination relates to the performance of the duties of such licensed sampler, classifier, and/or weigher under the act and this part.

§ 735.63 Reports.

Each licensed sampler, classifier, and/or weigher shall, from time to time, when requested by the Administrator, make reports, on forms furnished for the purpose by the Service, bearing upon his activities as such licensed sampler, classifier, and/or weigher.

§ 735.64 Licenses; suspension or revocation.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of a sampler, classifier and/or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by a licensed sampler, classifier, and/or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such licensed sampler, classifier, and/or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a licensed sampler, classifier, and/or weigher when such licensed sampler, classifier, and/or weigher (a) has ceased to perform services as such sampler, classifier, and/or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensed sampler, classifier, and/or weigher. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned under (a) or (b) of this section exist, it shall be the duty of such warehouseman to notify, in writing, the Administrator. Before the license of any licensed sampler, classifier, and/or weigher is permanently suspended or revoked pursuant to section 12 of the act, such licensed sampler, classifier, and/or weigher shall be furnished by the Secretary or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 735.89.

§ 735.65 Suspended or revoked licenses; return; termination of license.

(a) In case a license issued to a sampler, classifier, and/or weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, and it shall be returned to the licensed sampler, classifier, and/or weigher to whom it was originally issued, and it shall be posted as prescribed in § 735.56.

(b) Any license issued, under the act and the regulations in this part, to a sampler, classifier, and/or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such sampler, classifier, and/or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been revoked. Such new license shall be posted as prescribed in § 735.56.

§ 735.66 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a licensed sampler, classifier, and/or weigher, a duplicate thereof may be issued under the same number.

§ 735.67 Unlicensed classifiers and weighers.

No person shall in any way represent himself to be a sampler, classifier, and/or weigher licensed under the act unless he holds an unsuspended and unrevoked license issued under the act.

COTTON CLASSIFICATION

§ 735.68 Statement of class.

Whenever the grade or other class of cotton is required to be, or is, stated for the purpose of the act or the regulations in this part it shall be stated in accordance with §§ 735.68 through 735.73 as far as applicable.

§ 735.69 Official cotton standards of the United States.

The official cotton standards of the United States, established and promulgated under the United States Cotton Standards Act of March 4, 1923 (42 Stat. 1517; 7 U.S.C. 51-56), within their scope, are hereby adopted as the official cotton standards for the purposes of the act and the regulations in this part.

§ 735.70 Defective cotton; designation; terms defined.

(a) Cotton that,

(1) Because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary,

(2) Is below the grade of Good Ordinary,

(3) Is below the grade of Low Middling, if tinged,

(4) Is below the grade of Middling, if stained,

(5) Is linters,

(6) Is less than seven-eighths of an inch in length of staple,

(7) Is of perished staple,

(8) Is of immature staple,

(9) Is gin cut,

(10) Is reginned,

(11) Is repacked,

(12) Is false packed,

(13) Is mixed packed, or

(14) Is water packed, shall be designated as such.

In the case of paragraph (a)(1) of this section the particular extraneous matter or irregularities or defects shall be stated.

(b) If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade or below its apparent length of staple according to the official cotton standards of the United States, the grade or length of staple from which it is so reduced, and the grade or length of staple to which it is so reduced, and the quality or condition which so reduces its value shall be determined and stated.

(c) For the purposes of this section, the following terms shall be construed, respectively, to mean:

(1) *Cotton of perished staple.* Cotton that has had the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.

(2) *Cotton of immature staple.* Cotton that has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

(3) *Gin-cut cotton.* Cotton that shows damage in ginning through cutting by the saws, to an extent that reduces its value more than two grades.

(4) *Reginned cotton.* Cotton that has passed through the ginning process more than once and cotton that, after having been ginned, has been subjected to a cleaning process and then baled.

(5) *Repacked cotton.* Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled, or cotton in a bale which is composed of cotton from two or more smaller bales or parts of bales.

(6) *False packed cotton.* Cotton in a bale (i) containing substances entirely foreign to cotton, (ii) containing damaged cotton in the interior with or without any indication of such damage upon the exterior, (iii) composed of good cotton upon the exterior and decidedly inferior cotton in the interior in such manner as not to be detected by customary examination—that is, a plated bale, or (iv) containing pickings or linters worked into the bale.

(7) *Mixed packed cotton.* Cotton in a bale which, in the samples drawn therefrom, shows (i) a difference of three or more grades, or (ii) a difference of three or more color gradations, or (iii) a difference of two or more grades and two or more color graduations, or (iv) a difference in length of staple of one-eighth inch or more.

(8) *Water packed cotton.* Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.

§ 735.71 Class based on inspection and sample.

Whenever the grade or other class of cotton is required to be, or is, stated by a warehouseman or a classifier or board of cotton examiners for the purposes of the act or the regulations in this part, it shall be based upon a careful inspection of and a sample properly drawn from the cotton. Samples submitted to a board of cotton examiners for issuance of Form A memorandums and samples from which classification is to be determined by licensed classifiers for purposes of the Act and the regulations in this part shall be drawn by samplers licensed under the Act and said regulations and in accordance with § 735.72.

§ 735.72 Samples.

Each sample shall be approximately 6 ounces in weight, not less than 3 ounces of which are to be drawn from each side of the bale. Each sample must be representative of the bale from which drawn. Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Any sample which does not meet these requirements may be rejected.

§ 735.73 Lower grade (of two samples) to determine classification.

If a sample drawn from one portion of a bale is lower in grade or shorter in length than one drawn from another portion of such bale, the classification of the bale shall be that of the sample showing the lower grade or shorter length.

§ 735.74 Access to official cotton standards.

Each licensed warehouseman and each licensed classifier shall keep himself provided with, or have access to, a set of practical forms of the official cotton standards of the United States, or such parts thereof as the Administrator may deem necessary for use in the locality in which the licensed warehouse is located.

COTTON APPEALS

§ 735.75 Who may appeal.

Whenever the grade or other class of cotton, for which official cotton standards of the United States are in effect, is stated on a receipt or a cotton class certificate issued under the act and the regulations in this part, and a question arises as to the true grade or other class of such cotton, any person having an interest in the cotton may take an appeal for the determination of such question.

§ 735.76 Complaint.

In order to take such an appeal a complaint in writing in accordance with § 735.77 shall be filed with a duly authorized cotton examiner or a board of cotton examiners, or with the Administrator, who shall designate a cotton examiner or a board of cotton examiners for the purpose of disposing of such complaint.

§ 735.77 Contents of complaint.

Such complaint shall be in English and shall state:

(a) The name and post office address of the complainant and the nature of his interest in the cotton,

(b) The name and post office address of the holder of the receipt, if he be not the complainant, and of any other interested party,

(c) The name and location of the licensed warehouse in which the cotton is stored, and the tag number assigned to each bale of cotton involved in the appeal in accordance with § 735.31, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor,

(d) The grade or other class assigned by the licensed classifier, if any,

(e) The grade or other class, different from that assigned by the licensed warehouseman, which is contended for by any interested party,

(f) Whether, within complainant's knowledge, any appeal involving the same cotton previously has been taken, and if so, an appropriate identification of such other appeal.

(g) If samples have been agreed upon and are submitted in accordance with § 735.79(b), a statement thereof.

The complainant shall file with his complaint, when practicable, or before the issuance of the cotton appeal certificate, in the appeal, the warehouse receipt or class certificate, if any, covering the cotton involved in the appeal. When such receipt or certificate is not filed a definite statement indicating why such papers are not produced shall be filed.

§ 735.78 Proof of agent's authority.

In case a complaint is filed under §§ 735.75 through 735.77 by a person purporting to act in behalf of another person, the Administrator, or the cotton examiner or the board of cotton examiners with whom it was filed, may, if considered necessary, require proof of the authority of such person to file the complaint.

§ 735.79 Determination of appeals; samples.

(a) Appeals taken hereunder shall be determined upon the basis of samples of the cotton involved which have been drawn and submitted in accordance with this section.

(b) The complainant may submit samples of the cotton involved which have been agreed upon by the licensed warehouseman in whose warehouse the cotton is stored and the interested parties other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties. Such samples shall be drawn in accordance with § 735.72.

(c) If samples which have been submitted pursuant to paragraph (b) of this section be deemed unsatisfactory, the cotton examiner or board of cotton examiners by whom the appeal is heard or the Administrator may require the submission of new samples in accordance with paragraph (b) of this section.

(d) In case samples are not submitted in accordance with paragraph (b) or (c) of this section, the Administrator, the cotton examiner, or board of cotton examiners by whom the appeal is heard may dismiss the appeal as provided in § 735.80, or samples may be drawn from the cotton involved by a cotton examiner or by a disinterested person designated for the purpose by the cotton examiner or the board of cotton examiners by whom the appeal is heard or by the Administrator, and the complainant shall cause the cotton to be made accessible for the purpose of drawing such samples.

§ 735.80 Dismissal of appeals.

The Administrator or the cotton examiner or board of cotton examiners by whom an appeal is heard may dismiss such appeal upon request of the complainant, or for noncompliance with the regulations in this part, or if it be found that the appeal was not taken in good faith. In case of an appeal filed in the first instance with a cotton examiner, a dismissal upon request of the complainant shall be made only before notice of grade or other class as provided in § 735.81 is issued.

§ 735.81 Cotton appeal certificate.

When an appeal filed with a board of cotton examiners has been determined, it shall immediately issue a cotton appeal certificate. When an appeal has been determined by a cotton examiner he shall issue a notice, a copy of which shall be sent by him to all parties shown by the record of the appeal to have an interest therein. In such notice the grade or other class assigned by him to the cotton involved in the appeal shall be stated, and any such interested party shall have a reasonable time, fixed in such notice, within which he may request of the Administrator a review of the appeal by a board of cotton examiners. In case such request is not filed with such cotton examiner in the time fixed therefor, or in case within such time every such interested party waives in writing a review by a board of cotton examiners, the cotton examiner shall immediately issue a cotton appeal certificate showing the grade or other class assigned to the cotton by him. In case a request under this section for a review of an appeal is filed within the time fixed for the filing of such request, the cotton examiner shall note in his records the time of such filing and shall immediately notify the Administrator, who shall cause the appeal to be reviewed and a cotton appeal certificate issued showing the grade or other class assigned upon such review. Immediately upon the issuance of a cotton appeal certificate under this section, the original thereof, together with any receipt covering such cotton filed in the appeal, shall be sent to the licensed warehouseman concerned, and a copy shall be sent to each other person shown by the record of the appeal to be interested therein.

§ 735.82 Expenses paid by complainant.

All expenses for the transmission of communications from the complainant, for telegraph and telephone toll charges on messages addressed to him, and for drawing and submitting samples required by § 735.79, including such traveling expenses, if any, incurred in accordance with the fiscal regulations of the Department as the Administrator may deem proper, shall be borne by the complainant in the appeal in connection with which such expenses were incurred.

§ 735.83 Advance deposit by complainant.

If required by the cotton examiner or board of cotton examiners by whom the appeal is heard, the complainant shall make an advance deposit to cover the expenses payable by him under § 735.82. Such deposit shall be in an amount fixed by the cotton examiner or board of cotton examiners, and shall be in the form of a check, certified if required by the Administrator or a post office or express money order, payable to the order of "Treasurer of the United States." As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made, the Administrator shall furnish the Treasurer of the United States with a statement of the expenses, if any, chargeable against such advance deposit. Thereupon the Treasurer of the United States shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses.

§ 735.84 New warehouse receipt.

Upon demand by the lawful holder of a receipt for cotton involved in an appeal under §§ 735.75 through 735.85, the licensed warehouseman shall surrender to such holder the original cotton appeal certificate issued in such appeal, and, if the grade or other class shown by such certificate be different from that shown by the receipt, shall, upon the return of the old receipt, issue a new receipt stating the grade or other class shown by such cotton appeal certificate.

§ 735.85 Disposition of samples.

Samples submitted in appeals under this part may be used for the purposes of the Department or disposed of in accordance with the property regulations of the Department, and the proceeds, if any, covered into the Treasury of the United States as miscellaneous receipts, or may, at any time, in the discretion of the Administrator, be returned to the complainant at his expense.

MISCELLANEOUS

§ 735.86 Bonds required.

Every person applying for a license, or licensed, under section 9 of the act, shall, as such, be subject to all portions of these regulations so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of cotton and to store the same in any of said warehouses may, in lieu of a bond or bonds, complying with §§ 735.11 and 735.12, file with the Secretary a single bond meeting the requirements of the act and regulations in such form, and in such amount not less than $5,000, as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of cotton and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any renewals or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

§ 735.87 Publications.

Publications under the act and the regulations in this part shall be made in such media as the Administrator may from time to time designate.

§ 735.88 Information of violations.

Every person licensed under the act shall immediately furnish the Service any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 735.89 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6775, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.90 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 735.91 Assets and bond; combination warehouses.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 735.92 Amendments.

Any amendment to, or revision of this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

SOURCE: 29 FR 15730, Nov. 24, 1964, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

CROSS REFERENCE: For official grain standards of the United States, see Chapter VIII, Part 810 of this title.

DEFINITIONS

§ 736.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 736.2 Terms defined.

For the purposes of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Department.* The United States Department of Agriculture.

(d) *Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Designated representative.* The Administrator.

(f) *Administrator.* The Administrator of the Service or any other officer or employee to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(g) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(h) *Regulations.* Rules and regulations made under the act by the Secretary.

(i) *Dockage.* Dockage in grain as defined by the official grain standards of the United States.

(j) *Grain.* All products commonly classed as grain such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, sorghum, safflower seed, triticale, millet and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the Administrator.

(k) *Nonstorage grain.* Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no receipts are issued and no storage charges assessed: *Provided,* That merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as nonstorage grain.

(l) *Warehouse.* Unless the context otherwise clearly indicates, any building, structure, or other protected inclosure licensed or to be licensed under the act, in which grain is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which grain is or may be stored.

(m) *Bin.* A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

(n) *Warehouseman.* Any person lawfully engaged in the business of storing grain, who holds an effective warehouseman's license under the act, or who has applied for such a license.

(o) *License.* A license issued under the act by the Secretary, or his designated representative.

(p) *Warehouseman's bond.* The bond required by the act to be given by a warehouseman.

(q) *Inspector.* (1) A person licensed under the provisions of section 11 of the U.S. Warehouse Act, section 8 of the U.S. Grain Standards Act, or the provisions of the Agricultural Marketing Act of 1946 and (2) a Federal employee authorized under section 8 of the U.S. Grain Standards Act, or under the provisions of the Agricultural Marketing Act of 1946 to inspect, grade and/or certificate the grade of grain stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "duly licensed to inspect" and "licensed inspector" shall be defined accordingly).

(r) *Weigher.* (1) A person licensed under the provisions of section 11 of the U.S. Warehouse Act, section 8 of the U.S. Grain Standards Act, or the provisions of the Agricultural Marketing Act of 1946 and (2) a Federal employee authorized under section 8 of the U.S. Grain Standards Act, or under the provisions of the Agricultural Marketing Act of 1946, to weigh and/or certificate the weight of grain stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "duly licensed to weigh" and "licensed weigher" shall be defined accordingly).

(s) *Grain Standards Act.* The United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71-87) as amended.

(t) *Agricultural Marketing Act of 1946.* The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) as amended.

(u) *Official Standards of the United States.* The standards of the quality or condition for grain, fixed and established under the U.S. Grain Standards Act or the Agricultural Marketing Act of 1946.

(v) *Receipt.* A licensed warehouse receipt issued under the act.

[29 FR 15730, Nov. 24, 1964, as amended at 41 FR 7751, Feb. 20, 1976; 42 FR 12143, Mar. 3, 1977; 43 FR 14006, Apr. 4, 1978; 45 FR 5661, Jan. 24, 1980. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 736.3 Application form.

Applications for licenses and for amendments of licenses under the act shall be made to the Secretary upon prescribed forms furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

§ 736.3a All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of grain by an applicant for a warehouse license must qualify for a license and be licensed under the act if the applicant is to be licensed to operate as a grain warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Secretary or his designated representative upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of the nonfederally licensed facilities, there would be no likelihood of interchange, substitution, or commingling of grain stored in such facilities with grain stored in the federally licensed facilities. If all such facilities do not qualify for a license or for an exemption under this section, the applicant shall not be licensed under the act as a grain warehouseman in the city or town in which the facilities in question are located. Each applicant for a grain warehouse license must apply for a license covering all facilities operated by him for the storage of grain within the same city or town or for exemption as provided in this section. If a licensed grain warehouseman acquires any additional grain storage facilities within the same city or town in which his licensed warehouse is located, he shall file promptly an application for a license or an exemption of the additional facilities. No grain storage facility acquired by a licensed grain warehouseman, subsequent to the issuance of his license, in the same city or town as his licensed facilities, shall be used for the storage of grain until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed grain storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of grain until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of grain by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of grain.

§ 736.4 Scales; bin numbers.

(a) Each warehouse must be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the Department and to disapproval by the Administrator. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of grain for the purposes of this act, until such disapproval be withdrawn.

(b) Both bulk grain bins and compartments for sacked grain of all warehouses licensed under the act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the Service. Bulk grain bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.

§ 736.5 Signs of tenancy; posting.

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the act and the regulations in this part as may be approved by the Administrator.

(d) Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.

§ 736.6 Financial requirements.

(a) Each warehouseman conducting a warehouse licensed, or for which application for a license has been made under the regulations in this part, shall maintain complete, accurate and current financial records.

(b) Each warehouseman conducting a warehouse for which application for license is made shall provide with this application and each warehouseman licensed under these regulations annually, or more frequently if required, shall furnish to the Secretary financial statements from the records required in paragraph (a) of this section prepared according to generally accepted accounting principles. Such statements shall include but not be limited to: (1) Balance sheet, (2) statement of income (profit and loss), (3) statement of retained earnings, and (4) statement of changes in financial position. The chief executive officer for the warehouseman shall certify under penalties of perjury that the statements as prepared accurately reflect the financial condition of the warehouseman as of the date named and fairly represent the results of operations for the period named.

(c) Each warehouseman conducting a warehouse licensed under these regulations shall have the financial statements required in paragraph (b) of this section audited by an independent certified public accountant. Alternatively, financial statements audited or reviewed by an independent public accountant will be accepted with the understanding that the warehouseman will be subject to an additional on-site examination by the Secretary and to an audit by the Secretary. Audits and reviews by independent certified public accountants and independent public accountants specified in this section shall be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, shall be furnished along with the statements. Licensees who cannot immediately meet these requirements may apply to the Secretary for a temporary waiver of this provision. The Secretary may grant such waiver for a temporary period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

(d) Each warehouseman conducting a warehouse licensed, or for which application for a license has been made, under the regulations in this part, shall have and maintain above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 20 cents per bushel for the maximum number of bushels of grain that his warehouse could accommodate when stored in the manner customary to the warehouse as determined by the Administrator: *Provided*, That no person may be licensed as a warehouseman under the regulations in this part unless he has allowable net assets of at least $25,000: *And provided further*, That any deficiency in net assets required above the $25,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 736.14(c). In determining total net assets, credit may be given for insurable property such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. Such insurance shall be in the form of lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the State in which the warehouse is located.

(e) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses under the regulations in this part, the maximum number of bushels which all such warehouses will accommodate when stored in the manner customary to the warehouses, as determined by the Administrator, shall be considered in determining whether the warehouseman meets the net assets requirements specified in paragraph (d) of this section.

(f) For the purposes of paragraphs (d) and (e) of this section only, capital stock as such shall not be considered a liability.

(g) In case a State agency licensed or applying for a license as provided in Section 9 of the Act has funds of not less than $500,000 guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be considered sufficient to meet the net assets requirements of this section.

(h) In case a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 736.13(b), the licensed warehouseman shall have and maintain a minimum of $25,000 in allowable net assets and any deficiency in assets above the $25,000 minimum shall be covered by an acceptable and valid certificate.

[29 FR 15730, Nov. 24, 1964, as amended at 39 FR 41824, Dec. 3, 1974; 47 FR 23910, June 1, 1982; 49 FR 12667, Mar. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.7 Grounds for not issuing license.

A license for the conduct of a warehouse, or any amendment to a license, under the regulations in this part, shall not be issued if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of grain; that the warehouseman does not possess a good reputation, or does not have a net worth of at least $25,000.00, or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part; or that there is any other sufficient reason within the intent of the act for not issuing such license. If all the facilities operated for the storage of grain by the applicant within the same city or town are not to be licensed under the act, the applicant shall not be licensed as a grain warehouseman with respect to any of such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in § 736.3a.

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 23911, June 1, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.8 Posting of license.

Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 736.9 Warehouse license; suspension; revocation.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a warehouseman when such warehouseman—

(a) Does not have a net worth of at least $25,000;

(b) Has parted, in whole or in part, with his control over the licensed warehouse;

(c) Is in process of dissolution or has been dissolved;

(d) Has ceased to operate such licensed warehouse;

(e) Has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse;

(f) Has made unreasonable or exorbitant charges for services rendered;

(g) Is operating in the same city or town in which has licensed warehouse facilities are located, any facility for storage of grain which is not covered by a license or an exemption as provided in § 736.3a; or

(h) Has in any other manner violated or failed to comply with any provision of the act or the regulations in this part. Whenever any of the conditions mentioned in paragraphs (a) through (h) of this section shall come into existence, it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked or suspended (other than temporarily pending investigation) for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary or his designated representative, a written statement, specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 736.99.

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 23911, June 1, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.10 Return of suspended or revoked license.

In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or his designated representative, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued and it shall be posted as prescribed in § 736.8: *Provided,* That in the discretion of the Secretary, or his designated representative, a new license may be issued without reference to the suspension.

§ 736.11 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof, or a new license may be issued under the same number.

§ 736.12 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 736.13 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of one year commencing ——, or until the termination of said licenses(s) in the event of termination prior to the end of the one year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said one year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said one year period or are assumed during said period and prior to termination of said licenses(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

The bond shall be subject to §§ 736.14 through 736.17; or:

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraph (a). Such certificate of participation shall not be subject to §§ 736.14 and 736.15.

[49 FR 12667, Mar. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.14 Amount of bond; additional amounts.

(a) The amount of bond to be furnished for each warehouse under the regulations in this part shall be fixed at a rate of 20 cents per bushel for the first 1,000,000 bushels of licensed capacity; 15 cents per bushel for the next 1,000,000 bushels of licensed capacity; and 10 cents per bushel for all licensed capacity over 2,000,000 bushels: *Provided*, That in any case the amount of bond shall not be less than $20,000 nor more than $500,000, except as prescribed in paragraph (c) of this section. The licensed capacity shall be the maximum number of bushels of grain that the warehouse could accommodate as determined under § 736.6(d).

(b) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses in the same State he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State. In such case the warehouses to be covered by the bond shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the $25,000 minimum required under § 736.6, there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency. In any other case in which the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

[29 FR 15730, Nov. 24, 1964, as amended at 39 FR 41824, Dec. 3, 1974; 47 FR 23911, June 1, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.15 Amendment to license.

In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under §§ 736.13 through 736.17 covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part, may be filed in lieu of a new bond.

§ 736.16 New bond required each year.

A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year prior to the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him or his designated representative.

§ 736.17 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary, or his designated representative.

WAREHOUSE RECEIPTS

§ 736.18 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following:

(1) The name of the warehouseman and the designation, if any, of the warehouse,

(2) A statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws,

(3) In event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship,

(4) A statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise,

(5) The net weight, including dockage, if any, of the grain,

(6) In the case of grain the identity of which is to be preserved, its identification or location in accordance with § 736.45,

(7) The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and

(8) That the holder of the receipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one year from the date of the receipt.

(b) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one year, for which the grain is accepted for storage under the Act and the regulations in this part. Upon demand for issuance of a new receipt, surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified therein and an offer to satisfy the warehouseman's lien, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of grain in his warehouse, shall, in the absence of some lawful excuse, issue a new receipt for a further specified period, not exceeding one year.

(c) Every negotiable receipt issued shall, in addition to conforming with the requirements of paragraph (a) of this section, embody within its written or printed terms, a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.

(d) The grade stated in a receipt shall be stated in accordance with § 736.76 as determined by the inspector who last inspected and graded the grain or if an appeal has been taken, the grade shall be stated on such receipt in accordance with the grade as finally determined in such appeal.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made purposely by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 15730, Nov. 24, 1964, as amended at 45 FR 5661, Jan. 24, 1980; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.19 Grain must be inspected and weighed.

(a) Except in case of identity-preserved grain, when the grading is omitted at request of depositor, all storage and nonstorage grain received into the warehouse shall be inspected, graded and weighed by a licensed inspector and/or weigher—and no receipt may be issued under the Act or the regulations in this part until the grain covered by such receipt has been so inspected, graded and weighed.

(b) When requested by the depositor of grain the identity of which is to be preserved, a receipt omitting statement of grade but not weight may be issued.

(c) Except as provided in § 736.27, all storage and nonstorage grain delivered out of a warehouse must be inspected, graded and weighed by a licensed inspector and/or weigher.

[40 FR 19011, May 1, 1975. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.20 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.21 Lost or destroyed receipts; bond.

(a) In the case of lost or destroyed receipts, if there be no statute of the United States or law of a State applicable thereto a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with him (1) an affidavit showing that the applicant is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the grain represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 736.22 Printing of receipts.

Receipts issued by a warehouseman shall be: (a) In form prescribed by the Administrator, (b) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (c) on distinctive paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.23 Partial delivery of grain.

If a warehouseman delivers a part only of a lot of grain for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

§ 736.24 Return of receipts before delivery of grain.

Except as permitted by law or by the regulations in this part a warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver grain for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

§ 736.25 Nonnegotiable receipts.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of grain covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

§ 736.26 Omission of grade; no compulsion by warehouseman.

No warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any grain stored or offered for storage in his warehouse to request the issuance of a receipt omitting the statement of grade.

§ 736.27 Loading out without weighing.

(a) When the lawful owner of an entire lot of identity preserved grain or a mass of grain stored in a single bin requests the warehouseman to deliver said lot or mass without reweighing said grain, the warehouseman may make such delivery if there is an accurate record of the weight of such grain when received. Such deliveries shall be made only when the lawful owner agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the grain in the container have been surrendered to the warehouseman and canceled. After the receipts covering such grain have been surrendered for cancellation no other grain shall be placed in the bin until the entire lot has been delivered.

(b)(1) When the lawful owner of fungible grain requests the warehouseman to deliver grain out of the warehouse without weighing, the warehouseman may, but is not compelled to, make such delivery provided the grain is to be moved into another warehouse in the United States where weights can be established. The weights established at the receiving warehouse must be supervised by an independent weighing agency unless the shipping warehouse and the receiving warehouse are operated by the same warehouseman, or unless destination weights are available within 24 hours of shipment. Whenever a warehouseman delivers fungible grain out of a warehouse without weighing, the weight of the grain unloaded at the receiving warehouse shall be the weight used to determine fulfillment of the shipping warehouseman's delivery obligations.

(2) When fungible grain is delivered out of the warehouse without weighing, the warehouseman shall estimate as accurately as possible the weight of the grain delivered out and shall promptly obtain destination weights from the receiving warehouse. Should the Administrator determine that such estimated weights are not reasonably accurate, or that destination weights are not promptly obtained, or that destination weights are not supervised by an independent weighing agency when required, he may thereafter require the warehouseman to weigh all fungible grain delivered out of the warehouse.

(3) Any weight certificate issued covering grain delivered out of the warehouse without being weighed must state in bold letters on the face of the certificate the fact that the weight is an estimated weight.

[40 FR 19011, May 1, 1975. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.28 Persons authorized to sign receipts.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

§ 736.29 Receipts; basis for issuance.

Before issuing any receipt under the Act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of grain, first obtain either a copy of, or the original weight certificate, and inspection certificate, if any, covering said lot of grain. The warehouse records shall clearly identify the certificate(s) used as a basis for issuance of each warehouse receipt, and said weight and grade certificates shall be kept on file as a record in the warehouseman's office; provided that said filing requirements shall be deemed satisfied if copies of the certificates upon which warehouse receipts are based are filed in the office of a U.S. Registrar or in the office of an independent inspection or weighing agency which issued them, and are readily accessible for examination purposes. Such certificates shall be retained for a period of three years after December 31 of the year in which issued.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.30 Receipts for stored grain.

Receipts must be issued for all grain stored in a warehouse. Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds, and grades of all lots of nonstorage grain received into and delivered from his warehouse. Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery period from the warehouse becomes indeterminate, receipts shall be issued to cover such grain. Records required under this section with respect to nonstorage grain shall be retained, as a part of the records of the warehouse, for a period of one year after December 31 of the year in which the lot of nonstorage grain is delivered from the warehouse.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.31 No receipts for screenings.

No receipt shall be issued for any product or byproduct which would fall under the term "screenings."

§ 736.32 Canceled receipts; auditing.

Each warehouseman, if requested by the Service shall forward his canceled receipts for auditing to such field offices of the Service as may be designated from time to time.

DUTIES OF WAREHOUSEMAN

§ 736.33 Insurance; requirements.

(a) Each warehouseman, when so requested in writing as to any grain by the depositor thereof or lawful holder of the receipt covering such grain, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such grain while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage by fire, lightning, and/or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the grain is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all grain stored in his warehouse.

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts, nor permit his employees to do anything, which might impair or invalidate such insurance.

(c) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 736.8, and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning, and tornado.

(d) Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(e) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.

(f) If at any time a fire shall occur at or within any warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Administrator the occurrence of such fire and the extent of damage.

§ 736.34 Records; safe keeping.

Each warehouseman shall provide a fireproof safe, vault, or compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of issued and canceled receipts, except that with the written consent of the Service, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books and papers in some other place of safety, approved by the Service. Each canceled receipt shall be retained by warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.35 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the Department a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Department a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 736.8, and at such other place, accessible to the public, as the Service may from time to time designate, a copy of his current rules and schedule of charges.

§ 736.36 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving grain for storage and delivering grain out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his licensed warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, and the telephone number, if any, who shall be authorized to deliver grain stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

§ 736.37 System of accounts.

Each warehouseman shall have an maintain a system of accounts, approved for the purpose by the Service. This shall include a stock record showing for each lot of grain received for storage its net weight including dockage, if any, its grade when its grade is required to be, or is, ascertained, its location, the dates received for and delivered out of storage, the receipts issued and canceled, also a separate record for each depositor of his grain, which shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled on request of each depositor. The warehouseman shall further keep a general insurance account showing the policy number, issuing company, amount, binding, and expiration dates of all fire, tornado, and other insurance policies taken out by him and in each instance show the property covered by such policies. These records shall also show similar information concerning any nonstorage grain handled through the warehouse. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.38 Reports required.

(a) Each warehouseman shall, from time to time, if requested by the Service, make such reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

(b) Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

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[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.39 Inspections; examination of warehouse.

Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

§ 736.40 Care of grain in licensed warehouses.

Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

§ 736.41 Care of other grain and other commodities.

If, at any time, a warehouseman shall handle or store grain otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the grain in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the act and the regulations in this part.

§ 736.42 Excess storage.

If at any time a warehouseman shall store grain in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the Service of such excess storage, the reason therefor, and the location thereof.

§ 736.43 Removal of specially stored grain.

Except as may be required by law or the regulations in this part, a warehouseman shall not remove any grain for storage from the licensed warehouse or a part thereof in which it may be specially binned or stored for insurance purposes, and transfer the grain to another bin without first obtaining the receipt, canceling the same and issuing a new receipt for said grain following its transfer.

§ 736.44 Grades and weights; bulk grain.

Except as provided in § 736.27 each warehouseman shall accept all storage and nonstorage grain and shall deliver out all storage and nonstorage grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof, under the Act, and the regulations in this part; or if an appeal from the determination of an inspector has been taken, such grain shall be accepted for and delivered out of storage in accordance with the grades as finally determined in such appeal.

[45 FR 5661, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.45 Storage of identity-preserved grain.

Upon acceptance for storage of bulk grain the identity of which is to be preserved, the warehouseman shall store such grain in a bin or bins, a compartment or compartments, or other container or containers identified by clearly distinguishable identification insignia permanently and securely affixed thereto, subject to such control by the Department as may seem administratively necessary to protect depositors or holders of receipts. If the grain is received in bags or other suitable containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the grain will not be lost while in storage. The warehouseman's records shall at all times clearly show the location of all identity-preserved grain stored in the warehouse.

§ 736.46 Sacked grain.

Each warehouseman shall keep sacked grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting, and identification of each lot.

§ 736.47 Warehouses to be kept clean.

Each warehouseman shall keep his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain.

§ 736.48 Delivery of fungible grain.

Except as may be provided by law or the regulations in this part, each warehouseman: (a) Upon proper presentation of a receipt for any grain other than identity-stored grain, and which grain has not at the request of the depositor or lawful holder of the receipt covering such grain or otherwise as permitted by law or the regulations in this part, been dried or otherwise conditioned by such warehouseman, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt grain of the grade and quantity named in such receipt; and (b) upon proper presentation of a receipt for any grain the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical grain so stored in his warehouse.

§ 736.49 Cleaning of grain.

Each warehouseman whose warehouse is equipped with machinery suitable for the purpose, shall clean all bulk grain, received for storage in such warehouse, on which the inspector at the request of the depositor or lawful holder of the receipt covering such grain has set dockage for cleaning.

§ 736.50 Grades; separate in storage.

A warehouseman may not mix lots of different grades of grain stored or received for storage except when the identity of the grain to be stored is to be preserved or when a depositor surrenders receipts covering two or more lots and requests the warehouseman to deliver the amount of grain represented by the canceled receipts in such a manner that they will become one lot. The balance, if any, of grain resulting from this operation, after weighing and inspecting, is to be stored with grain of like grade or its identity preserved.

§ 736.51 Stocks to be in balance by grades.

Warehousemen must keep stocks of grain in storage by grades in balance with the grades of grain represented by outstanding storage obligations for which receipts have been or are to be issued, except when the grain has unavoidably improved or deteriorated through natural causes. In case the grades of stored grain should get out of balance with grades represented by outstanding storage obligations for which receipts have been or are to be issued, the warehouseman shall effect proper adjustments.

§ 736.52 Out-of-condition and damaged grain.

(a) If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the licensed warehouse, the warehouseman shall not receive such grain for storage or store such grain in his licensed warehouse, but, if the warehouse has separate bins or is equipped with proper conditioning apparatus, he may receive such grain for storage in such separate bins or he may condition it and then store it in such manner as will not lower the grade of other grain.

(b) In case the warehouseman or the Department shall find that storage of grain in direct contact with any part of the structure of the warehouse results, or is likely to result, in damage to the grain, the warehouseman shall not store grain in such part of the warehouse except in such manner and by the use of such material as will keep the grain in the same condition as when stored.

§ 736.53 Reconditioning grain.

In case the warehouseman considers that any portion of the grain in his warehouse is out of condition, or becoming so, he shall direct the inspector to examine the grain in question. If the inspector finds such grain to be out of condition or becoming so and he is of the opinion that by re-elevating, screening, blowing, cooling, or drying the grain can be brought back into condition or that further deterioration can be prevented, such warehouseman shall give immediate notice of the fact to the persons and in the manner specified in § 736.54. If, within 24 hours after the giving of such notice, the owners of such grain have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the inspector, shall, in his warehouse to the extent to which it is equipped with machinery suitable for the purpose, or may in another warehouse or elevator so equipped to the extent to which his warehouse is not equipped with suitable machinery, subject the grain to any or all of the above-mentioned processes.

§ 736.54 Notice of condition of grain.

(a) If the warehouseman with the approval of the inspector, shall determine that the further deterioration of any grain can not be prevented by reconditioning, or after treating it in accordance with § 736.53, it is still out of condition, the warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state:

(1) The warehouse in which the grain is stored,

(2) The quantity, kind, and grade, if determined, of the grain at the time the notice is given,

(3) The actual condition of the grain as nearly as can be ascertained, and the reason, if known, for such condition,

(4) The oldest outstanding receipts covering the amount of grain out of condition, other than sacked or specially binned grain, upon which the grain will be delivered, giving the number and date of each such receipt and the quantity, the kind, and grade of the grain as stated in such receipts, or

(5) The outstanding receipts covering the grain out of condition the identity of which was to have been preserved, giving the number and date of each such receipt and the designation of the bin, container or location of such grain as stated in the receipt therefor, and

(6) That such grain will be delivered upon the return and cancellation of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail:

(1) To the persons holding the oldest receipts covering the grain in question mentioned in paragraphs (b) (4) and

(5) of this section if known to the warehouseman,

(2) To any other person, including the persons mentioned in paragraph (d) of this section, known by the warehouseman to be interested in the grain,

(3) To the grain exchange, board of trade, or chamber of commerce, if any, in the city or town in or nearest to which the warehouse is located, and

(4) To the Administrator.

If the holders of the receipts and the owners of the grain are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do in accordance with paragraph (d) of this section, also immediately notify such persons by telegraph or telephone at their expense. Public notice shall also be given by posting a copy of such notice in a conspicuous place in the main office of the warehouse where receipts are issued. A copy of such notice shall be kept as a record of the warehouse.

(d) Any person, interested in any grain or the receipt covering such grain stored in a warehouse, may, in writing, notify the warehouseman conducting such warehouse, of the fact and nature of his interest, and such warehouseman shall keep a record of the fact. If such person requests, in writing, that he be notified regarding the condition of any such grain and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any grain after notification of its condition in accordance with this section.

(f) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.55 Sale of grain at public auction.

If the grain, advertised in accordance with the requirements of § 736.54 has not been removed from storage by the owner thereof, within 10 days from the date of notice of its being out of condition, the warehouseman in whose warehouse such grain is stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in § 736.54(c).

§ 736.56 Identity-preserved grain; acceptance.

Subject to the provisions of section 13 of the act (39 Stat. 488; 7 U.S.C. 254), a licensed warehouseman may elect not to receive grain for storage the identity of which is to be preserved while in storage.

FEES

§ 736.57 License fees.

There shall be charged and collected a fee of $50 for each original warehouse license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to inspect, grade, or weigh agricultural products stored or to be stored under provisions of this Act.

[46 FR 63199, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.58 Warehouse inspection fees

(a) A fee shall be charged and collected:

(1) For each original examination or inspection, or reexamination or reinspection for modification of an existing license, of a warehouse under the Act computed at the rate of $10 for each 10,000 bushels of storage capacity or fraction thereof but not less than $100 nor more than $1,000;

(2) For each examination of a licensed warehouse, requested in writing by the warehouseman, computed at the rate of 75 percent of the annual fee under paragraph (b) of this section applicable to warehouses not having a Uniform Grain Storage Agreement (The request must state the purposes of the examination and contain an agreement to pay all required costs. The Secretary may refuse any such request if performing the examination would affect the Department's performance of regular program responsibilities.); and

(3) For each examination of a warehouse whose license has been suspended, the suspension is determined to be justified, and reinstatement is requested by the warehouseman, computed at the rate of 100 percent of the annual fee under paragraph (b) of this section applicable to warehouses not having a Uniform Grain Storage Agreement.

(b) Each warehouseman shall pay an annual fee computed in accordance with this subsection using the table set forth below. The fee will be assessed and payable when bond is first furnished for acceptance by the Secretary and annually thereafter on the bond renewal date. The fee will be determined by computing the amount due for each identifiable location under the license and adding those amounts together to determine the total amount due for the license. The warehouse capacity at each location will be determined by the Secretary. The total capacity of all warehouses at all locations shall not exceed the capacity stated in the current warehouse license. An identifiable location is a fully functional facility operated as a public warehouse as determined by the Secretary. An outlying unit which is not a fully functional operating facility is included under the nearest fully functional operating facility.

ANNUAL FEE TABLE

Location grain capacity (bushels)	Annual fee (dollars) for each warehouse location with uniform grain storage agreement	Annual fee (dollars) for each warehouse location without uniform grain storage agreement
1 to 150,000	100	200
150,001 to 250,000	200	400
250,001 to 500,000	300	600
500,001 to 750,000	400	800
750,001 to 1,000,000	500	1,000
1,000,001 to 1,200,000	600	1,200
1,200,001 to 1,500,000	700	1,400
1,500,001 to 2,000,000	800	1,600
2,000,001 to 2,500,000	900	1,800
2,500,001 to 5,000,000	1,000	2,000
5,000,001 to 7,500,000	1,100	2,200
7,500,001 to 10,000,000	1,200	2,400
10,000,001 +	[1] 1,200	[2] 2,400

[1] Plus $30 per million bushels of capacity above 10 million or fraction thereof.

[2] Plus $60 per million bushels of capacity above 10 million or fraction thereof.

[50 FR 34076, Aug. 23, 1985; 50 FR 35535, Sept. 3, 1985]

§ 736.59 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63199, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.60 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 736.59 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing same.

INSPECTORS AND WEIGHERS

§ 736.61 Inspectors' and weighers' applications.

(a) Application for licenses to inspect and grade or to weigh grain under section 11 of the act (46 Stat. 1464; 7 U.S.C. 252) shall be made to the Administrator on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the warehouseman for whom the applicant will inspect, grade, or weigh grain under the act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose.

(b) Each inspectors' application shall contain:

(1) Evidence that he can correctly grade grain in accordance with the official standards of the United States, or in the absence of such standards in accordance with any standards approved by the Administrator, and

(2) Satisfactory evidence that he will be provided with such means or facilities for inspecting and grading grain as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

(c) Applications for licenses to weigh grain shall be on forms furnished for the purpose by the Administrator and shall give such information as will show the applicant's experience in weighing grain.

(d) A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

(e) An applicant shall at any time furnish such additional information as the Department shall find to be necessary to the consideration of his application.

[29 FR 15730, Nov. 24, 1964, as amended at 34 FR 12426, July 30, 1969; 40 FR 5347, Feb. 5, 1975; 43 FR 14006, Apr. 4, 1978. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.62 Examination.

Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the Department, submit to an examination or test to show his ability properly to inspect and grade or to weigh grain.

§ 736.63 Posting of license.

Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the Service unless authorized by the Service not to do so.

[43 FR 14006, Apr. 4, 1978. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.64 Duties of inspector and weigher.

Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect and grade or weigh and certificate the grade or weight of grain, stored or to be stored in a warehouse, for which he holds a license, if such grain be offered to him under such conditions as permit proper inspection and weighing and the determination of the grade or weight thereof. No inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain.

§ 736.65 Inspection certificate; form.

(a) Except as provided in paragraph (b) of this section, each inspection certificate issued under the act by an inspector shall be in a form approved for the purpose by the Department, and shall embody the following information within its written or printed terms:

(1) The caption "United States Warehouse Act, Grain Inspection Certificate",

(2) Whether it is an original, a duplicate, or other copy, and that it is not negotiable,

(3) The name and location of the warehouse in which the grain is or is to be stored,

(4) A statement showing whether the inspection covers grain moving into or out of the warehouse,

(5) The date of the certificate,

(6) The consecutive number of the certificate,

(7) The approximate amount of grain covered by the certificate,

(8) The kind of grain covered by the certificate,

(9) The grade of the grain, as determined by such duly licensed inspector, in accordance with § 736.76, and, in the case of grain for which no official standards of the United States are in effect, the standards or description in accordance with which such grain is graded.

(10) A statement that the certificate is issued by an inspector licensed under the United States Warehouse Act and the regulations thereunder,

(11) A statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and

(12) The signature of the inspector who inspected and graded the grain.

In addition, the inspection certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

(b) In lieu of an inspection certificate in the form prescribed in paragraph (a) of this section an official inspection certificate issued pursuant to the provisions of the United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.) or the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) on grain which is stored or to be stored in a warehouse licensed under the U.S. Warehouse Act will be acceptable for purposes of the act and the regulations in this part.

[29 FR 15730, Nov. 24, 1964, as amended at 42 FR 12143, Mar. 3, 1977; 45 FR 5662, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.66 Copies of certificate to be accessible.

Each inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the grain is involved at the place designated in § 736.63 a true copy of the inspection certificate issued by him for such grain, or a record of each lot or parcel of grain inspected and graded by such licensed inspector showing the information contained on such inspection certificate.

§ 736.67 Weight certificate.

(a) Each weight certificate issued under the act by a weigher shall be in a form approved for the purpose by the Service, and shall embody the following information within its written or printed terms:

(1) The caption "United States Warehouse Act, Grain Weight Certificate",

(2) Whether it is an original, a duplicate, or other copy, and that it is not negotiable,

(3) The name and location of the warehouse in which the grain is or is to be stored,

(4) Whether the grain is weighed into or out of the warehouse,

(5) The date of the certificate,

(6) The consecutive number of the certificate,

(7) The net weight, including dockage, if any, of the grain except as provided in § 736.27(b).

(8) A statement that the certificate is issued by a weigher licensed under the United States Warehouse Act and the regulations thereunder, and

(9) The signature of the weigher.

In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part provided the approval of the Service is first secured.

(b) In lieu of a weight certificate in the form prescribed in paragraph (a) of this section, an official weight certificate issued pursuant to the provisions of the U. S. Grain Standards Act, or an official weight certificate issued pursuant to the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the U.S. Warehouse Act is acceptable for purposes of the Act and the regulations in this part.

[42 FR 12143, Mar. 3, 1977, as amended at 43 FR 14006, Apr. 4, 1978. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.68 Certificate; grade and weight.

The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of

§§ 736.65, 736.67, if the form of such certificate shall have been approved for the purpose by the Service.

§ 736.69 Copies of certificates to be kept.

Each inspector and each weigher shall keep for a period of 1 year in a place accessible to interested parties a copy of each certificate issued by him under the regulations in this part, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

§ 736.70 Inspections.

Each inspector and each weigher shall permit any authorized officer or agent of the Department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 736.39 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the act and the regulations in this part.

§ 736.71 Reports.

Each inspector and each weigher shall, from time to time, if requested by the Service, make reports, on forms approved for the purpose by the Service, bearing upon his activities as such inspector or weigher.

§ 736.72 Licenses; suspension or revocation.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such licensee: (a) Has ceased to perform services as such inspector or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under (a) or (b) of this section exists, it shall be the duty of such warehouseman to notify the Service in writing. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section 12 of the act, such inspector or weigher shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 736.99.

§ 736.73 Suspended or revoked license; termination of license.

(a) In case a license issued to an inspector or a weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in § 736.63.

(b) Any license issued under the act and the regulations in this part to an inspector or weigher shall automatically be suspended as to any warehouse whenever the license of such warehouse shall be suspended and shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked. Upon either suspension or termination of any inspector's or weigher's license under this paragraph, such license shall be returned to the Department. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to the licensee a new license, omitting the names of the warehouses for which licenses have been revoked or suspended. Such new license shall be posted as prescribed in § 736.63.

§ 736.74 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary, or his designated representative.

§ 736.75 Unlicensed inspectors and weighers.

No person shall in any way represent himself to be an inspector or weigher for purposes of the U.S. Warehouse Act unless he holds an unsuspended and unrevoked license or authorization in accordance with the provisions of paragraphs (q) and (r) of § 736.2.

[42 FR 12144, Mar. 3, 1977. Redesignated at 50 FR 1814, Jan. 14, 1985]

GRAIN GRADING

§ 736.76 Grade; statement.

Whenever the grade of grain is required to be or is stated for the purpose of the act or the regulations in this part, it shall be stated in accordance with §§ 736.77 through 736.79.

§ 736.77 Official Standards of the United States.

The Official Standards of the United States are hereby adopted as the official grain standards for the purposes of the Act and the regulations in this part.

[45 FR 5662, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.78 Standards of grades for other grain.

Until official standards of the United States are fixed and established for the kind of grain to be inspected, the grade of the grain shall be stated, subject to the approval of the Administrator: (a) In accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the grain trade generally in the locality in which the warehouse is located, or (c) in the absence of the standards mentioned in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by the Service.

[45 FR 5662, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.79 Grades based on inspection and sample.

Whenever the grade of grain is required to be or is stated for the purposes of the act or the regulations in this part, it shall be based upon a correct and representative sample of the grain and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade.

GRAIN APPEALS

SOURCE: Sections 736.80 to 736.85 appear at 45 FR 5662, Jan. 24, 1980, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

§ 736.80 Appeal procedure.

The depositor, holder of receipt or the warehouseman may make an appeal as to the grade of a lot of grain stored or to be stored in a licensed warehouse. If the original grade certificate was issued by an inspector licensed under, or authorized by, the U.S. Grain Standards Act or the Agricultural Marketing Act, the appeal, including the amount of fees, shall be governed by the regulations issued under those Acts respectively; otherwise the appeal, including fees shall be governed by §§ 736.81 through 736.83.

§ 736.81 Request for appeal.

A request for an appeal inspection by a depositor or holder of receipt must be made by written notice to the warehouseman before the identity of the lot of grain has been lost and not later than the close of business on the first business day following furnishing of the statement of original grade or if the appeal is requested by the warehouseman, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice. Where is it not practical for a warehouseman to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently opportunity for appeal, any depositor or his agent before or at the time of delivery of his grain may request the warehouseman to retain the identity of such lot until said depositor has been furnished with a statement of grade for the lot and has waived or requested and received an appeal inspection grade. The warehouseman need not preserve the identity of the lot in the original carrier; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouseman may defer unloading such grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.

§ 736.82 Appeal sample—obtaining, preservation, delivery and examination.

(a) The lot of grain for which an appeal is requested shall be resampled in such manner and quantity as the depositor or holder of receipt and the warehouseman agree results in a representative sample of the lot acceptable to each for appeal purposes. Should they be unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of both shall be deemed binding. In no case shall the sample be of less than 2000 grams by weight.

(b) The sample shall be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.

(c) For grains for which there are official U.S. Standards the sample shall be secured and delivered to the nearest office charged with providing official inspection service under the U.S. Grain Standards Act and/or the Agricultural Marketing Act of 1946. At this point procedures as set forth in regulations issued under the U.S. Grain Standards Act or under the Agricultural Marketing Act of 1946 shall govern. For grain for which there are no official U.S. Standards the party requesting the appeal shall apply directly to the Administrator for relief. The Administrator or delegate thereof shall promptly determine the appeal based on approved standards and set the required fees. Such determination shall be binding on all concerned parties.

(d) The sample shall be accompanied by: (1) A copy of the written request for appeal, (2) the grain inspection certificate originally issued, and (3) an agreement to pay the costs of such inspection as prescribed by the U.S. Grain Standards Act, the Agricultural Marketing Act or the Administrator.

(e) The sample of the grain involved in the appeal shall be examined as soon as possible. Such tests shall be applied as are necessary; and, unless the appeal is dismissed, a grade certificate shall be issued by the person determining the grade, showing the grade assigned by him to such grain. This certificate shall supersede the inspection certificate originally issued for the grain involved. The original or a copy of the new grade certificate shall be sent to the depositor or holder of receipt, the licensed warehouseman and the licensed inspector making the original determination of grade.

§ 736.83 Dismissal of appeal.

The departmental agency to whom the appeal has been made may dismiss such appeal without its determination upon request of the party initiating the appeal or for noncompliance with the regulations in this part.

§ 736.84 Freedom of appeal.

(a) No person licensed under the Act, shall, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal.

(b) No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization nor any contract, agreement, or understanding, shall be ground for refusing to determine any appeal.

§ 736.85 Owner not compelled to store.

Nothing in these regulations shall require the owner or his agent to store such grain with the licensed warehouseman after the appeal inspection, but if the grain is stored it shall be accepted for and delivered out of storage in accordance with the grade as finally determined in such appeal.

§§ 736.86—736.95 [Reserved]

MISCELLANEOUS

§ 736.96 Bonds required; re State warehouses.

Every person applying for a license, or licensed under section 9 of the act shall, as such, be subject to all portions of the regulations in this part, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of grain and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 736.13 and 736.14, file with the Secretary, or his designated representative, a single bond meeting the requirements of the act and this part, in such form, and in such amount not less than $5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of grain and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond, so fixed, a further amount, fixed by him, to meet such conditions.

§ 736.97 Publications.

Publications under the act and the regulations in this part shall be made in such media as may be deemed proper by the Administrator.

§ 736.98 Information of violations.

Every person licensed under the act shall immediately furnish the Department any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 736.99 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6775, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.100 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 736.101 Assets and bond; combination warehouses.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 736.102 Amendments.

Any amendment to this part, unless otherwise stated, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

TERMINAL AND FUTURES CONTRACT MARKETS

§ 736.103 Futures contract market defined.

For the purpose of §§ 736.737 through 736.111 a futures contract market is any grain market designated as a futures contract market under authority of the Commodity Exchange Act (49 Stat. 1491, as amended; 7 U.S.C. 1-17a).

§ 736.104 Licenses to weigh grain; futures markets.

Licenses to weigh grain into, out of, and within licensed warehouses, receipts of which are deliverable in satisfaction of futures contracts may be issued to the weighmaster and his deputies of such contract market.

§ 736.105 Registrar of warehouse receipts; futures contract market.

The Administrator may approve as registrar of warehouse receipts issued for grain in licensed elevators operating in any terminal market or in any futures contract market the official designated by the State in which such market is located, if such an official position has been created by law, or any other individual, provided such individual is not an employee of, or the owner of, any such licensed elevator, or the owner of, or an employee of the owner of, grain deposited in any such licensed elevator.

§ 736.106 Licenses to State and other employees.

Licenses may be issued to employees of the grain inspection department of any State or any other agency to inspect and to certificate the grade of grain moving into, out of, or within the licensed elevators.

§ 736.107 License to chief sampler or deputy.

Licenses may be issued to employees of the grain inspection department of any sample and to inspect grain stored or to be stored in any licensed warehouse in a specified market for the purpose of determining the storability of the grain, subject to the act and the regulations thereunder. Should a difference of opinion exist between any licensed warehouseman, the licensed sampler or any party having an interest in the grain, an appeal may be filed within 24 hours with the Administrator who shall appoint three disinterested persons to serve as an appeals committee and the findings of this committee shall be final and binding on all parties.

§ 736.108 Additional bonding required.

In addition to the financial responsibility and the bonding requirements of §§ 736.6, 736.13 through 736.17, such additional bond shall be required for the protection of the public as will make the bonded responsibility of each licensed warehouseman equal to the maximum amount of bond required of nonlicensed warehousemen by the exchange, board of trade, or other agency within said market in which the licensed warehouseman is operating.

§ 736.109 Examination of warehouses; board of trade interest.

Annually or more frequently if desired, a duly authorized committee of any exchange or board of trade that has been designated as a contract market may enter any warehouse operating under the regulations in this part, when accompanied by U.S. warehouse examiners, to observe the official examination of the warehouse; or such committee may participate in the making of such examination, under the supervision and direction of the U.S. warehouse examiner in charge. The committee shall be afforded full knowledge of the quantities, kinds, grades, and condition of all grain in the warehouse. The committee may also with the warehouse examiners have access to the warehouseman's records of receipts, fire insurance, weights and grades. In lieu of an examination by any committee of the exchange or board of trade the Department will furnish if desired to the secretary of the exchange or board of trade a summarized statement of its findings of conditions at each licensed warehouse operating within the market.

§ 736.110 Registration of public warehouse receipts; protection.

When a contract market designates any agency for the registration of public warehouse receipts and such agency is approved as provided for in § 736.105, all warehouse receipts shall be registered with the registrar and any change in ownership of a warehouse receipt shall be reported to the registrar by the owner thereof, giving his name and address to the registrar. All registered receipts shall be entitled to the following protection:

(a)(1) Whenever any licensed warehouseman considers that any grain stored in his warehouse is out of condition, or becoming so, and should be loaded out in order to protect the interests of the parties concerned, such warehouseman shall notify the registrar and the Administrator, giving the location, approximate quantity, grades, and condition of such grain, and the specific reason which makes loading out necessary. The registrar shall immediately notify the chief sampler, if there be one, otherwise the chief inspector, of the contract market who shall at once proceed to the warehouse in which the grain is stored and examine it, in conjunction with the licensed warehouseman. If the chief sampler, or chief inspector, agrees with the warehouseman that the grain should be loaded out, he shall so notify the registrar and the Administrator. If the chief sampler does not agree with the warehouseman, the latter shall have the right to appeal to the Administrator who shall appoint an appeals committee as provided in § 736.107. If, on such appeal, the warehouseman is sustained, the registrar shall be notified and such warehouse receipts as are selected as provided in this section shall no longer be regular for delivery in satisfaction of futures contracts made under the rules and regulations of such contract market.

(2) The registrar shall thereupon select the oldest registered warehouse receipt for grain of the grade involved and such additional next oldest registered warehouse receipts in the order of their issuance as may be necessary to equal the total quantity of the grain involved, unless such grain has been stored identity preserved, and shall notify such holder or holders or their agents and the president of the contract market of the condition of the grain and the necessity for its being loaded out. When this information reaches the president of the contract market he shall appoint a committee consisting of five disinterested handlers of cash grain, and notify the Administrator of the appointment of said committee giving the name, address, and business of each member. Each member of said committee shall be subject to disapproval by the Administrator. If no exception is taken to the committee membership during the same business day by the Administrator, the committee shall meet at once, and after taking into consideration various factors that establish the value of the grade of grain called for by the receipts held by such owner or owners, shall determine the fair value of the grain on the basis of the market quotations for grain of the grade called for by the receipts on the day of the finding of the appeals committee that the grain should be loaded out, which price shall be paid to the owner or holder of each such receipt by the licensed warehouseman. If the price offered is not satisfactory to any such owner or holder, a committee appointed by the president of such contract market at the request of such owner or holder shall procure other offers for such grain and such offers shall be immediately reported to such owner or holder or to his agent. If the owner refuses to accept any such offers he shall have the 2 following business days to order and furnish facilities for loading such grain out of store and during this period the warehouseman shall be obliged to deliver the grain covered by the warehouse receipts, but not more than 3 days shall elapse after notification by the registrar to the holder of the receipts before satisfactory disposition shall have been made of the grain either by sale or by ordering out and furnishing facilities to load same, provided the amount of such grain does not exceed 100,000 bushels in any one elevator. If the

amount of grain in question exceeds 100,000 bushels, the owner or owners of the warehouse receipts shall be allowed 48 hours of grace over and above the aforementioned 3 days for each 100,000 bushels or fraction thereof in excess of the first 100,000 bushels.

(b) In the event that the holder of the warehouse receipt or his agent fails to remove the grain or make other satisfactory disposition of same within the prescribed time it shall be held for his account and any loss in grade sustained shall likewise be for his account.

(c) Nothing in this section shall be construed as prohibiting the warehouseman from fulfilling contracts from other stocks under his control, subject to the U.S. Warehouse Act and regulations thereunder.

§ 736.111 Terminal markets.

Sections 736.737 through 736.111 apply only to warehousemen operating in such markets as may have been heretofore or may be hereafter designated as futures contract markets, and §§ 736.737 through 736.107 apply also to warehousemen operating in such markets as the Department may view as terminal markets, and the appointment heretofore or hereafter of a registrar of warehouse receipts, as provided in § 736.105 is conclusive that the Department views such market as a terminal market for purposes of the Warehouse Act. All other regulations issued under the act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except as such regulations may conflict with §§ 736.737 through 736.111.

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

SOURCE: SRA, BAE 129, Revised, 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

CROSS REFERENCE: For regulations under the Tobacco Inspection Act, see 7 CFR Part 29 of this chapter.

DEFINITIONS

§ 737.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand.

§ 737.2 Terms defined.

For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Designated representative.* The Administrator.

(e) *Department.* The United States Department of Agriculture.

(f) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(g) *Administrator.* The Administrator of the Service, or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(h) *Regulations.* Rules and regulations made under the act by the Secretary.

(i) *Warehouse.* Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which tobacco is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which tobacco is or may be stored and for which a license has been issued under the act.

(j) *Warehouseman.* Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

(k) *License.* A license issued under the act by the Secretary.

(l) *Type.* Any one of the main classes of tobacco having certain peculiar characteristics which will permit of its being divided into a single system of grades.

(m) *Grade.* Any one of the divisions of a type, which may be a combination of any or all of the four factors, group, quality, color, and length.

(n) *Form.* The designation of the stage of preparation of tobacco, such as unstemmed, stemmed, stems, etc.

(o) *Condition.* Any state of tobacco which is not covered by form or grade and which has a material bearing on its value, including its keeping quality.

(p) *Sampler.* A person licensed under the act by the Secretary to sample and to certificate or tag and seal samples of tobacco drawn by him under the act.

(q) *Inspector.* A person licensed under the act by the Secretary to inspect and to certificate the keeping quality of the tobacco in addition to the performance of the duties of a sampler.

(r) *Grader.* A person licensed under the act by the Secretary to grade and to certificate the type, grade, form, and condition of tobacco.

(s) *Weigher.* A person licensed under the act by the Secretary to weigh and certificate the weight of tobacco.

(t) *Package.* A hogshead, tierce, case, or other unit.

(u) *Official sample.* A sample of a package of tobacco drawn, tagged, and prepared by a sampler in accordance with §§ 737.55 through 737.56.

(v) *Receipt.* A warehouse receipt.

(w) *State.* A State, Territory, or District of the United States.

[SRA, BAE 129, rev., 7 FR 6806, Aug. 29, 1942, as amended at 13 FR 8729, Dec. 30, 1948. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 737.3 Application form.

Applications for licenses and for amendments to licenses under the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Department may find necessary to a proper consideration of his application.

§ 737.4 Grounds for not issuing license.

A license for the conduct to a warehouse shall not be issued if it be found by the Secretary, or his designated representative that the warehouse is not suitable for the proper storage of tobacco, that the warehouseman is insolvent or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the purposes of the act for not issuing such license.

§ 737.5 Net assets.

Each warehouseman conducting a warehouse licensed, or for which application for license has been made, shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least $5 per 1,000 pounds of the maximum number of pounds of tobacco that the warehouse will accommodate when stored in the manner customary to the warehouse, as determined by the Administrator, except that the amount of such assets shall not be less than $5,000 and need not be more than $100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. A deficiency in such assets may be supplied by an increase in the amount of the licensed warehouseman's bond in accordance with § 737.12(b).

§ 737.6 Posting license.

Immediately upon receipt of his license or of any amendment thereto under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 737.7 Suspension or revocation of license.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent, (b) has parted, in whole or in part, with his control over the licensed warehouse, (c) is in process of dissolution or has been dissolved, (d) has ceased to conduct such licensed warehouse, or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) through (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Administrator of the existing condition. Before a license is revoked for any violation of or failure to comply with any provision of the act or of the regulations in this part or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 737.78.

§ 737.8 Return of suspended or revoked license.

If a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or by his designated representative it shall be returned to the Secretary when requested. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 737.6.

§ 737.9 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number.

§ 737.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it or he is so licensed shall be used either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 737.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing ———, or until the termination of said license(s) in the event of termination prior to the end of the 1-year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1-year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1-year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.12 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of $5 per 1,000 pounds of the maximum number of pounds of tobacco that the warehouse will accommodate when stored in the manner customary to the warehouse, as determined by the Administrator, but not less than $5,000 nor more than $50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 737.11 through 737.15.

(b) In case of a deficiency in net assets under § 737.5 there shall be added to the amount ascertained in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) If the Secretary, or his designated representative finds the existence of conditions warranting such action, there shall be added to the amount ascertained in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him to meet such conditions.

§ 737.13 Amendment to license.

If an application is made under § 737.3 for an amendment to a license and no bond previously filed by the warehouseman under §§ 737.11 through 737.15 covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative that his application for such modification or extension will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part, may be filed in lieu of a new bond.

§ 737.14 New bond required each year.

Whenever, a license has been issued for a longer period than 1 year, such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by the Secretary or his designated representative prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 737.13.

§ 737.15 Approval of bond.

No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary or his designated representative.

WAREHOUSE RECEIPTS

§ 737.16 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for tobacco stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (1) The name of the warehouseman and the designation, if any, of the warehouse, (2) the license number of the warehouseman, (3) the number of the bonded compartment, if any, in which the tobacco is stored, (4) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (5) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (6) the identification number given to each package in accordance with § 737.33, (7) a statement, conspicuously placed, indicating whether the tobacco is insured by the warehouseman, and, if insured, to what extent against loss or damage by fire, lightning, or tornado, and (8) the words "Negotiable" or "Not negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for tobacco stored in a warehouse shall specify a period, not exceeding 3 years, for which the tobacco is accepted for storage under the act and the regulations in this part, but upon demand and the surrender of the receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, so far as the available capacity of his warehouse then permits and upon such lawful terms and conditions as may be granted by him at such time to other depositors of tobacco in the warehouse, if he then continue to act as a licensed warehouseman, may either extend the original receipt by making an appropriate notation thereon or issue a new receipt for a further specified period not exceeding 3 years, provided it is actually determined by a licensed inspector that the tobacco has not deteriorated and that it is in proper condition for further storage.

(c) Every negotiable receipt issued for tobacco stored in a licensed warehouse shall, in addition to complying with the requirements of paragraphs (a) and (b) of this section, embody within its written or printed terms a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the tobacco covered by the receipt.

(d) Whenever the type, grade, form, or condition is required to be or is stated in a receipt for tobacco stored in a licensed warehouse, it shall be stated in accordance with § 737.69. Whenever the grade is stated in such receipt, the type, form, and condition also must be stated.

(e) If a warehouseman issues a receipt under the act omitting any information, not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[SRA, BAE 129, Revised, 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.17 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman: (1) An affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the tobacco represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business and is subject to service of process in a suit on the bond in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 737.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman except it be: (a) In form prescribed by the Administrator; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[SRA, BHE 129, Revised, 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.20 Partial delivery of tobacco.

If a warehouseman delivers a part only of a lot of tobacco for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the tobacco. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

§ 737.21 Return of receipts before delivery of tobacco.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver tobacco for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver tobacco for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof. Before delivery is made of the last portion of a lot of tobacco covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

§ 737.22 Nonnegotiable receipts.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize, delivery of tobacco covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of tobacco covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

§ 737.23 Persons authorized to sign receipts.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

§ 737.24 Receipts; basis for issuance.

Before issuing any receipt under the act each warehouseman shall, unless he has personally weighed, inspected and graded, if graded, a lot of tobacco, first obtain either a copy of or the original weight certificate, and inspection and/or grade certificate, if any, covering said lot of tobacco and said weight, inspection and grade certificate shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the tobacco covered by such certificate or certificates shall be written on the certificate or certificates before filing. Such certificates shall be retained, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which the certificates are issued.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.25 Omission of grade; no compulsion by warehouseman.

No licensed warehouseman shall, directly or indirectly, by any means whatsoever compel or attempt to compel the depositor of any tobacco stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 737.26 Insurance; requirements.

(a) Each warehouseman, when so requested in writing by the depositor of or the lawful holder of the receipt for any tobacco, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such tobacco while in his custody insured in his own name, or arrange for its insurance otherwise, to the extent so requested against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the tobacco is not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all tobacco.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 737.6 and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which tobacco will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him upon tobacco stored in his warehouse, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 737.27 Duties re insurance and bonding companies.

Each warehouseman, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, shall pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 737.28 Records; safe keeping.

Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt books, unissued receipt blanks, copies of receipts issued, and canceled receipts, except that with the written approval of the Administrator, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety. Each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

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[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 22 FR 1629, Mar. 14, 1957; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.29 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted the warehouseman shall file with the Service a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 737.6, and at such other place, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedules of charges.

§ 737.30 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving tobacco for storage and delivering tobacco out of storage every business day for a period of not less than 6 hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he may be found, who shall be authorized to deliver tobacco stored in such warehouse, upon lawful demand and proper compliance with the regulations in this part.

§ 737.31 Packaging tobacco.

(a) A warehouseman shall not receive for storage in his warehouse any tobacco that is not properly packaged.

(b) A warehouseman shall return to the package from which it is taken all the tobacco drawn for the selection of a sample, except the portion used for such sample.

§ 737.32 Clean warehouse.

(a) Each warehouseman shall keep his warehouse clean and free from trash, rubbish, and scattered tobacco.

He shall also exercise every precaution to keep his warehouse free of rats or other pests.

(b) When in the opinion of the Administrator or his representatives it may appear necessary, it shall be the duty of each licensed warehouseman to fumigate thoroughly his licensed warehouse with such chemicals as may be approved by the Administrator for that purpose.

§ 737.33 Package identification.

A warehouseman shall mark, stencil, or tag each package of tobacco received for storage in his warehouse with a number by which the identity of such package will be preserved. Such numbers shall be in numerical sequence or any series of numerical sequences approved by the Administrator or his representative, shall be made with some durable substance, and shall be clear and legible. If tags are used they shall be made of substantial material and securely attached to the packages.

§ 737.34 Package arrangement.

(a) A warehouseman shall arrange the tobacco stored in his warehouse so that each package of each depositor can be readily removed for inspecting, weighing, or delivering, and he shall arrange each package of tobacco in his warehouse so that the identification number thereon required by § 737.33 is visible and readily accessible, but when the Administrator shall find that it is not practicable to arrange each package so that the identification numbers are visible and accessible, he may authorize the warehouseman to arrange the packages of tobacco in rows and keep in the warehouse a card or chart upon which shall be clearly shown the identification number of each package stored in each row. Such authorization may be withdrawn at any time that the warehouseman fails to observe this requirement or to keep his record current.

(b) If, at any time, a warehouseman shall be offered tobacco in such quantity for storage so as to exceed the capacity of his warehouse, as shown in his license, he shall not accept such tobacco until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the tobacco in accordance with paragraph (a) of this section, and so as not to obstruct free access to the tobacco and the proper use of sprinkler or other fire protection equipment provided for the warehouse.

§ 737.35 Care of stock and equipment.

Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to tobacco in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. He shall see that the sprinkler or other fire protection equipment, if any, provided for his warehouse is maintained in proper working order.

§ 737.36 Care of other commodities.

If, at any time, a warehouseman shall handle tobacco other than for storage, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the tobacco in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that such commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of, or impair the insurance on, tobacco covered by licensed receipts.

§ 737.37 Removal of tobacco in storage.

Except as permitted by law or the regulations in this part, a warehouseman shall not remove any tobacco in storage from the part of the warehouse shown in the receipt to another part covered by the license, or to any other licensed warehouse, without first securing the receipt and indorsing on it the fact and date of such removal and making an identical indorsement on the copy of the original receipt. If the insurance on any tobacco would be affected by such removal, prior to removal the warehouseman shall obtain the consent in writing of the holder of the receipt. In the event it should be necessary for purposes of proper sampling and inspecting to move temporarily tobacco from the licensed warehouse, or licensed compartment shown on the outstanding receipt to another licensed warehouse or licensed compartment, removal for such purpose may be made without recalling the outstanding receipt upon compliance with the following conditions:

(a) That such tobacco will be moved only upon specific instructions of the depositor of the tobacco when title to the tobacco remains in him, or of the holder of the receipt, such instructions to be reduced to writing and filed by the warehouseman with his other warehouse records. Said instructions shall show by marks or numbers the specific tobacco to be moved, the warehouse or compartment from and to which the tobacco is to be moved, the date of removal and upon return to the warehouse or compartment from which removed the warehouseman shall indicate the date of return.

(b) That said tobacco so removed shall be fully covered by insurance against loss by fire, lightning, tornado, or theft both while in transit to and from the licensed warehouse or licensed compartment shown in the outstanding receipt and while in the warehouse in which it is being sampled and inspected.

(c) That no such removal from one licensed warehouse or licensed compartment to another licensed warehouse or licensed compartment shall take place while Department examiners are engaged in making inspections except as the chief of the inspection party may approve.

Under no other circumstances, unless it becomes absolutely necessary to protect the tobacco, shall tobacco covered by receipts issued under the act be removed from a warehouse, except as provided in § 737.21. In case it becomes necessary to remove tobacco from a warehouse prior to the surrender of the receipts, the warehouseman immediately upon such removal, shall notify the Service of such removal and the necessity therefor.

§ 737.38 Handling and storing; care.

A warehouseman shall not handle or store tobacco in such a manner as will injure or damage the tobacco or the packages containing the tobacco.

§ 737.39 Tobacco out of condition.

(a) If the warehouseman, with the approval of a licensed inspector or grader shall determine that any tobacco is deteriorating and that such deterioration can not be stopped, the warehouseman shall give immediate notice of the fact in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state: (1) The warehouse in which the tobacco is stored; (2) the actual condition of the tobacco as nearly as can be ascertained, and the reason, if known, for such condition; (3) the outstanding receipts covering the tobacco out of condition, giving the number and date of each such receipt and the type, grade, form, condition, and weight of the tobacco as stated in each such receipt; and (4) that such tobacco will be delivered upon the return and surrender of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts, if known to the warehouseman; (2) to the person who originally deposited the tobacco; (3) to any other persons known by the warehouseman to be interested in the tobacco; and (4) to the Administrator. Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. A copy of such notice shall be kept as a record of the warehouse. If the holders of the receipts and the owners of the tobacco are known to the warehouseman and cannot, in the regular course of the mails, be reached within 36 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person financially interested in any tobacco or the receipt covering such tobacco stored in a licensed warehouse may, in writing, notify the warehouseman of the fact of his interest, and such warehouseman shall keep a record of that fact. If such person request in writing that he be notified regarding the condition of any such tobacco and agree to pay the cost of any telegraph or telephone toll charge the warehouseman shall notify such person in accordance with his request.

(e) If the tobacco advertised in accordance with the requirements of this section has not been removed from storage by the owner thereof within seven days from the date of notice of its being out of condition, the warehouseman in whose warehouse such tobacco is stored may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any tobacco after notification of its condition has been given in accordance with this section.

(g) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.40 System of accounts.

A warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Administrator or his representative, which shall show for each package of tobacco the name of the depositor, the identification number mentioned in § 737.33, its weight, type, grade, form, and condition when same is required to be or is ascertained, its location, the dates received and delivered out of storage, the receipts issued and canceled, and a separate record for each depositor of his tobacco, and such accounts shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled. Such records shall be retained by the warehouseman for a period of six years after December 31, of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.41 Reports; copies.

(a) Each warehouseman shall, from time to time, when requested by the Administrator or his representative, make reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

(b) Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

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[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.42 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his canceled receipts for auditing to Washington or to such field office of the Service as may be designated from time to time. For the purpose of this section, only such portion of each canceled receipt as the Service may designate, numbered to correspond with the actual receipt number, need be submitted.

§ 737.43 Examination of warehouses.

Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine, at any time, any warehouse for the conduct of which such warehouseman has been licensed, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

§ 737.44 Weighing apparatus.

The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for tobacco stored in a licensed warehouse, shall be subject to examination by any officer or agent of the Department employed for the purpose. If the Service shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval is withdrawn, be used in ascertaining the weight of tobacco for the purposes of the act and the regulations in this part.

§ 737.45 Licensee preferred for service.

(a) Except as authorized by the Administrator, a warehouseman shall not have any tobacco stored or to be stored in his warehouse, sampled, inspected, graded, or weighed for the purpose of his record or receipts by any person not licensed under the act to perform such services, if there be a person so licensed for such warehouse.

(b) When a grade or weight certificate has been issued by a grader or weigher and delivered to the warehouseman with the first copy of such certificate, the warehouseman shall fill in the identification numbers required in § 737.33, on each certificate, and shall mail or deliver the original certificate to the depositor and file the copy of such certificate as a part of the records of the warehouse.

§ 737.46 Reporting fire loss.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegraph to the Administrator the occurrence of such fire and the extent of damage.

§ 737.47 Signs of tenancy; posting.

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the act and the regulations in this part as may be approved by the Administrator.

(d) Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.

FEES

§ 737.48 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to inspect, grade, sample, or weigh agricultural products stored or to be stored under provisions of this Act.

[46 FR 63199, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.49 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of $10 for each 100,000 pounds of storage capacity, or fraction thereof, determined in accordance with § 737.12, but in no case less than $100 nor more than $500; and

(b)(1) For each licensed warehouse an annual fee at the rate of $10 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case shall the fee be less than $400 nor more than $2,000. The licensed capacity shall be that stated in the current warehouse license as determined under § 737.12.

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63199, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.50 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.51 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 737.50 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

[SRA, BAE 129, rev., as amended at 3 FR 1400, June 14, 1938. Redesignated at 50 FR 1814, Jan. 14, 1985]

LICENSED SAMPLERS, INSPECTORS, GRADERS, AND WEIGHERS

§ 737.52 Applications; samplers', inspectors', graders', and weighers'.

(a) Applications for licenses to sample, to inspect, and to grade or to weigh tobacco under the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by: (1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made under the act in which tobacco sought to be sampled, inspected, graded, or weighed under such license is or may be stored, (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the act and the regulations in this part so far as the same may relate to him, and (5) such other information as the Service may deem necessary: *Provided,* That when an application for a license to sample, to inspect, to grade, or to weigh tobacco is filed by a person who does not intend to sample, to inspect, to grade, or to weigh for any particular licensed warehouseman but who does intend to sample, to inspect, to grade, or to weigh tobacco stored or to be stored in a licensed warehouse and to issue certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipt, issued to cover such tobacco, it shall not be necessary to furnish such statement as is required by paragraph (b)(2) of this section.

(c) The applicant shall at any time furnish such additional information as the Secretary or his designated representative shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to sample, to inspect, to grade, and to weigh upon complying with all the requirements of this section.

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 41 FR 34005, Aug. 12, 1976. Redesignated at 50 FR 1814, Jan. 14, 1985]

CROSS REFERENCE: For inspectors, samplers, and weighers regulations under the Tobacco Inspection Act, see 7 CFR 29.106 through 29.113 of this chapter.

§ 737.53 Examination.

Each applicant for license as a sampler, inspector, grader, or weigher, and each sampler, inspector, grader, or weigher, whenever requested by an authorized agent of the Department, shall submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed, and each such applicant, or licensee shall furnish the Service any information requested, at any time, in regard to his sampling, inspecting, grading, or weighing of tobacco.

§ 737.54 Posting of license.

Each sampler, inspector, grader, or weigher shall keep his license conspicuously posted at the place or office where he functions as a sampler, inspector, grader, or weigher, or in such other place as may be designated for the purpose by the Service.

§ 737.55 Proper discharge of duties.

Each sampler, inspector, grader, or weigher, according to the nature of his license, when requested shall, without discrimination, as soon as practicable, and upon reasonable terms, sample, inspect, grade, or weigh tobacco stored or to be stored in a licensed warehouse for which he holds a license, if such tobacco be offered to him under such conditions as will permit proper sampling, inspecting, grading, or weighing. Each such licensee shall give preference to persons who request his services as such other persons who request his services in any other capacity. No official sample shall be drawn and no inspection, grade, or weight certificate shall be issued under the act for tobacco not stored or to be stored in a licensed warehouse.

§ 737.56 Official samples; sample tags and seals.

(a) Each licensed sampler shall provide himself, unless provided by the warehouseman, with a sufficient quantity of tags of a kind and quality approved by the Administrator or his representative for identifying the samples of tobacco drawn by him. There shall be clearly written or printed on the face of each tag (1) the number of the tag, (2) the caption "Official Tobacco Sample Drawn under the United States Warehouse Act", (3) the name and location of the licensed warehouse in which the tobacco is or is to be stored, (4) the identification number, in accordance with § 737.33, of the package from which the sample was drawn, except when sampled before being stored, in which case the private number and marks of the package shall be shown and a blank space left for said identification number, (5) the date on which the sample was drawn, and (6) a statement to the effect that the sample was drawn by a sampler licensed in accordance with the United States Warehouse Act and the regulations thereunder. One such tag shall be attached to each official sample of tobacco so as to preserve the identity of the sample.

(b) Each sampler shall seal each official sample of tobacco drawn by him so as to prevent the removal of the tag mentioned in paragraph (a) of this section, or the separation of the sample into parts without breaking the seal. Such seal shall show (1) the name of the sampler, (2) the license number of such sampler, and (3) the insignia "U.S.W.A."

(c) Each official sample taken from a package of tobacco stored or to be stored in a licensed warehouse shall be of such size and drawn and prepared in such manner as may be required by the Administrator or his representative.

§ 737.57 Inspection certificate; form.

Each inspection certificate issued under the act by an inspector shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms (a) the caption "Tobacco Inspection Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of inspecting, (g) a blank space for the purpose of showing the identification number of each package of tobacco, in accordance with § 737.33, (h) the keeping quality or condition of each package of tobacco at the time of inspecting, (i) a blank space designated for the purpose in which may be stated any condition that, in the opinion of the inspector, may affect the keeping quality of the tobacco, (j) that the certificate is issued by a licensed inspector under the United States Warehouse Act and the regulations thereunder, and (k) the signature of the inspector. In addition, the inspection certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 737.58 Grade certificate; form.

Each grade certificate issued under the act by a grader shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms (a) the caption "Tobacco Grade Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of grading, (g) a blank space for the purpose of showing the identification number of each package, in accordance with § 737.33, (h) the grade, type, form, and condition of each package of tobacco at the time of grading, (i) the number of each official sample, if graded upon sample, (j) that the certificate is issued by a licensed grader, under the United States Warehouse Act and regulations thereunder, (k) a blank space designated for the purpose in which may be stated any general remarks on the condition of the tobacco, and (l) the signature of such licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 737.59 Weight certificate; form.

Each weight certificate issued under the act by a weigher shall be in a form approved for the purpose by the Service, and shall embody within its written or printed terms (a) the caption "Tobacco Weight Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of weighing, (g) a blank space for the purpose of showing the identification number of each package, in accordance with § 737.33, (h) the gross, tare, and net weight of each package of tobacco, (i) a blank space designated for the purpose in which may be stated any condition that in the opinion of the weigher may affect the weight of the tobacco, (j) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder, and (k) the signature of the weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 737.60 Combined certificate.

A combined certificate of inspection, grade, and weight may be issued if such certificate meets all the requirements of §§ 737.57 through 737.61.

§ 737.61 Issuance of certificates.

Each licensed inspector, grader, or weigher shall, as soon as possible after inspecting, grading, or weighing any tobacco stored or to be stored in a licensed warehouse, issue an original and a first copy inspection, grade, or weight certificate, as the case may be, for such tobacco, and deliver both the original and first copy of the certificate to the warehouseman, in whose warehouse the tobacco is or is to be stored, except, when the functions of warehouseman, inspector, grader, and weigher are all performed by the same person, with the approval of the Administrator, inspection, grade, and weight certificates need not be issued.

§ 737.62 Type, grade, form, or condition; statement.

Whenever the type, grade, form, or condition of tobacco is required to be or is stated for the purposes of the act and the regulations in this part, it shall be stated in accordance with §§ 737.69 through 737.73.

§ 737.63 Licensees to permit and assist in examinations.

Each sampler, inspector, grader, or weigher shall permit any authorized officer or agent of the Department to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, when requested, assist any such officer or agent in the inspection or examination mentioned in § 737.43, as far as any such inspection or examination relates to the performance of his duties as a licensee.

§ 737.64 Suspension or revocation of licenses.

Pending investigation the Secretary or his designated representative may, whenever he deems necessary, suspend the license of a sampler, inspector, grader, or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor submitted by the licensee, or when the licensee has ceased to perform the services for which licensed, the Secretary or his designated representative may, without hearing, suspend or revoke the license issued to such licensee. The Secretary, or his designated representative may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a sampler, inspector, grader, or weigher when such licensee has, in any manner, become incompetent or incapacitated to perform his duties as such licensee. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions in this section exist, it shall be his duty to notify in writing the Service. Before the license of any sampler, inspector, grader, or weigher is permanently suspended or revoked, pursuant to section 12 of the act, such licensee shall be furnished by the Secretary or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 737.78.

[SRA, BAE, 129, rev.; 7 FR 6806, Aug. 29, 1942, as amended at 13 FR 8730, Dec. 30,

1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.65 Return of suspended, revoked, terminated licenses.

In case a license issued to a sampler, inspector, grader, or weigher is suspended or revoked by the Secretary or by his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it is revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the person to whom it was originally issued, and it shall be posted as prescribed in § 737.54.

Any license issued to a sampler, inspector, grader, or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse is suspended, expires, or is revoked, and the license of such sampler, inspector, grader, or weigher shall be returned to the Secretary. In case such license shall apply to more than one warehouse, the Secretary or his designated representative shall issue a new license, omitting the names of the warehouses for which licenses have been suspended, terminated, or revoked. Such new license shall be posted as prescribed in § 737.54.

§ 737.66 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a sampler, inpector, grader, or weigher a duplicate thereof or a new license may be issued under the same or a new number.

§ 737.67 Reports.

Each sampler, inspector, grader, or weigher shall, from time to time, when requested by the Department, make reports on forms furnished for the purpose by the Service bearing upon his activities as such licensee.

§ 737.68 Unlicensed persons; misrepresentation.

No person shall in any way represent himself to be a sampler, inspector, grader, or weigher licensed under the act unless he holds an unsuspended or unrevoked license issued under the act.

TOBACCO CLASSIFICATION

§ 737.69 Type, grade, form, or condition; statement.

Whenever the type, grade, form, or condition of tobacco is required to be or is stated for the purposes of the act and the regulations in this part, it shall be stated in accordance with §§ 737.69 through 737.73.

§ 737.70 Standards to be used.

Until such time as official tobacco standards of the United States are in effect, the type, grade, form, and condition of tobacco shall be stated: (a) In accordance with such standards, if any, as may be approved for the purpose by the Administrator, or his representative, or (b) in the absence of any such standards, in accordance with the standards adopted by any tobacco organization or by the tobacco trade generally in the locality in which the warehouse is located, subject to disapproval by the Administrator.

§ 737.71 Type, grade, form, or condition.

Whenever the type, grade, form, or condition of tobacco is stated for the purposes of the act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the tobacco. In determining the type, grade, form, or condition of a package of tobacco, the package as a whole shall be considered rather than parts of it which do not materially affect the value of the entire package and minor irregularities in the tobacco shall be overlooked.

§ 737.72 Type, grade, and form; statement.

Whenever the type, grade, or form of tobacco is stated for the purposes of the act and the regulations in this part, it shall be based upon a careful and thorough examination of the package of tobacco or an official sample thereof. In case the tobacco in one part of a package or sample is inferior to that in other parts of the package or sample, the grade assigned to the tobacco shall be an average, considering the proportion that each part bears to the whole, and in case of a question as to which grade of two or more grades should be assigned to the tobacco, the lowest grade in question shall be assigned.

§ 737.73 Statement of condition.

Whenever the condition of tobacco is stated for the purpose of the act and the regulations in this part, it shall be based upon a careful and thorough examination of the package of tobacco. In case any portion of a package of tobacco is found to be in a tangled, doubtful keeping, or nested condition, the condition stated for the whole package shall be based upon such tangled, doubtful keeping, or nested portion.

APPEAL ON SAMPLING OR CLASSIFICATION OF TOBACCO

§ 737.74 New receipts; expenses.

If a question arises as to the accuracy of an official sample, or whether the type, grade, form, or condition of the tobacco was correctly stated in a receipt or certificate issued under the act or the regulations in this part, the warehouseman concerned or any person financially interested in the tobacco involved may, after reasonable notice to the other party, submit the question to such committee as the Administrator may appoint. The decision of the committee shall be final, unless the Administrator shall direct a review of the question. Immediately upon making their decision, the committee shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved.

If the decision of the committee be that the sample was not representative of the package of tobacco, or that the type, grade, form, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of type, grade, form, or condition in accordance with the findings of the committee.

All necessary and reasonable expense of such appeal shall be borne by the losing party, unless the Administrator shall decide that the expense should be prorated between the parties.

MISCELLANEOUS

§ 737.75 Bonds required; re State warehouses.

Every person applying for a license or licensed under section 9 of the act shall, as such, be subject to all portions of the regulations in this part, except § 737.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of tobacco and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with § 737.12, file with the Secretary a single bond meeting the requirements of the act and the regulations in this part, in such form, and in such amount not less than $5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of tobacco and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.

§ 737.76 Publications.

Publications under the act and the regulations in this part shall be made in such media as the Administrator may from time to time designate for the purpose.

§ 737.77 Violations to be reported.

Every person licensed under the act shall immediately furnish the Service any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 737.78 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6775, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.79 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document, or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 737.80 Assets and bond; combination warehouses.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 737.81 Amendments.

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

PART 738—WOOL WAREHOUSES

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DEFINITIONS

§ 738.1 Words in singular form.

Words used in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 738.2 Terms defined.

For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-274), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Designated representative.* The Administrator.

(e) *Administrator.* The Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(f) *Department.* The United States Department of Agriculture.

(g) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(h) *Regulations.* Rules and regulations made under the act by the Secretary.

(i) *Warehouse.* Any suitable building, structure, or other protected inclosure in which wool is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which wool is or may be stored and for which a license has been issued under the act.

(j) *Warehouseman.* Any person lawfully engaged in the business of storing wool.

(k) *License.* A license issued under the act by the Secretary or his designated representative.

(l) *Grader.* A person licensed under the act by the Secretary or his designated representative, to grade and to certificate the grade of wool stored or to be stored in a licensed warehouse.

(m) *Weigher.* A person licensed under the act by the Secretary or his designated representative, to weigh and to certificate the weight of wool stored or to be stored in a licensed warehouse.

(n) *Receipt.* A warehouse receipt.

(o) *Kind of wool.* Grease, scoured, or pulled, and sorted or unsorted wool, or sorted or unsorted mohair.

(p) *State.* A State, Territory, or District of the United States.

[5 FR 3607, Sept. 10, 1940, as amended at 13 FR 8729, Dec. 30, 1948. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 738.3 Application form.

Applications for licenses and amendments to licenses under the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Administrator may find to be necessary to the proper consideration of his application.

§ 738.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of wool, that the warehouseman is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the intent of the act for not issuing such license.

§ 738.5 Net assets.

Any warehouseman conducting a warehouse licensed or for which application for license has been made under the act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least $15 per 1,000 pounds or fraction thereof of the maximum number of pounds of wool that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator: *Provided,* That the amount of such assets shall not be less than $5,000 and need not be more than $100,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 738.12(b).

§ 738.6 Posting license.

Immediately upon receipt of his license or of any amendment thereto under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted, until suspended or revoked, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.

§ 738.7 Suspension or revocation of license.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by a warehouseman, the Secretary, or his designated representative may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary or his designated representative may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become non-existent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Administrator of the existing condition. Before a license is permanently suspended or revoked for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 738.72.

§ 738.8 Return of terminated, suspended, or revoked license.

When a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 738.6: *Provided,* That in the discretion of the Secretary or his designated representative a new license may be issued without reference to the suspension.

§ 738.9 Lost or destroyed warehouse license.

Upon satisfactory evidence of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.

§ 738.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman or any other person shall be designated or represented as licensed under the act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such person or warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 738.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing ————, or until the termination of said license(s) in the event of termination prior to the end of the 1 year period, all obligations of a licensed warehouseman under the terms of the act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1 year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1 year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.12 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of $15 per 1,000 pounds or fraction thereof of the maximum number of pounds of wool that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Administrator but not less than $5,000 nor more than $50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 738.11 through 738.15.

(b) In case of a deficiency in net assets as required by § 738.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary or his designated representative finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount fixed by him to meet such conditions.

§ 738.13 Amendment of license.

If application is made under § 738.3 for an amendment of a license, and no bond previously filed by the warehouseman under §§ 738.11 through 738.15 covers obligations arising under such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice a bond complying with the act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part may be filed in lieu of a new bond.

§ 738.14 New bond required each year.

Whenever a license has been issued for a period longer than 1 year, such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary or his designated representative, prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 738.13.

§ 738.15 Approval of bond.

No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary or his designated representative.

WAREHOUSE RECEIPTS

§ 738.16 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for wool stored in a warehouse, shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms of the following: (1) The name of the warehouseman and the designation, if any, of the warehouse; (2) the number of the license issued to the warehouseman; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship; (5) a statement, conspicuously placed, whether the wool is insured by the warehouseman and, if insured, to what extent and whether against fire, lightning, or otherwise; (6) the kind of wool; (7) a blank space designated for the purpose in which, if the wool is not commingled, a careful estimate of the shrinkage of the wool may be stated, or in which, if the wool is commingled, a careful estimate of the shrinkage of the wool shall be stated; (8) if the wool is not commingled, its identification in accordance with § 738.34; (9) if the wool is commingled, a clear and conspicuous notation to that effect, and the designation of the lot or pile of which it is a part on the face of the receipt; and (10) the words "Negotiable" or "Nonnegotiable" and "Original" or "Copy" according to the nature of the receipt, clearly and conspicuously printed thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for wool stored in a warehouse shall specify a period, not exceeding 1 year, for which the wool is accepted for storage under the act and the regulations in this part. Upon demand and surrender of the old receipt, by the lawful holder thereof, at or before the expiration of the specified period, and cancelation of the receipt, the warehouseman, upon such lawful terms and conditions as he may grant at such time to other depositors of wool in his warehouse, if he then continues to act as a licensed warehouseman, shall issue a new receipt for a further specified period not exceeding 1 year and shall indicate thereon the date when the wool was first received.

(c) Every negotiable receipt issued for wool stored in a warehouse shall, in addition to complying with the requirements of paragraph (a) of this section, embody within its written or printed terms the following: (1) If the wool covered by such receipt was graded by a licensed grader or weighed by a licensed weigher, a statement to that effect; (2) a form of indorsement which may be used by the depositor or the lawful holder of the receipt, or the authorized agent of either, for showing the ownership of, and liens, mortgages, or other encumbrances on, the wool covered by the receipt.

(d) Whenever the grade is stated in a receipt issued for wool stored in a warehouse, such grade shall be stated in accordance with §§ 738.64 through 738.67.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor, as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the act omitting any information not required to be stated, and for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[5 FR 3607, Sept. 10, 1940; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.17 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, if there be no statute of the United States or a law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman: (1) An affidavit showing that he is lawfully entitled to the possession of the orginal receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value at the time the bond is given of the wool represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[5 FR 3607, Sept. 10, 1940; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

CROSS REFERENCE: For surety companies authorized to do business with the United States, see 31 CFR Part 223.

§ 738.19 Printing of receipts.

No receipt shall be issued by a warehouseman except it be (a) in form prescribed by the Administrator, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[5 FR 3607, Sept. 10, 1940; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.20 Grade, weight, shrinkage of commingled wool.

The grade, weight, and approximate shrinkage stated in a receipt for wool that is or is to be commingled shall be as determined by a grader and weigher duly licensed to grade and weigh and to certificate the grade and weight thereof under the act and the regulations in this part.

§ 738.21 Cancellation of receipts; delivery of wool.

Except as otherwise provided in the regulations in this part all receipts shall be canceled by the warehouseman when the wool covered by such receipts is to be delivered, is to be graded, sorted, or scoured, or its identity is to be disturbed in any manner.

§ 738.22 Partial delivery of wool.

If a warehouseman delivers a part only of a lot of wool for which he has issued a negotiable receipt, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the wool.

§ 738.23 Receipts; return and cancellation.

Except as permitted by law or by the regulations in this part a warehouseman shall not deliver wool for which he has issued a negotiable receipt until such receipt has been returned to him and canceled, and shall not deliver wool for which he has issued his nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written order for delivery and a signed acknowledgment thereof. Such order shall specify the receipt involved, the grade of the wool if stated on the receipt, and the amount of wool to be delivered.

§ 738.24 Nonnegotiable receipts.

Each person to whom a nonnegotiable receipt is issued or the holder thereof shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of wool covered by such receipt together with the genuine bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of wool covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.

§ 738.25 Omission of grade; no compulsion by warehouseman.

No licensed warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any wool in his warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 738.26 Method of storing wool.

(a) Each warehouseman shall, subject to the provisions of section 13 of the act, receive for storage in his warehouse all wool offered for storage the identity of which is to be preserved during the storage period, and also, if he so elects, as provided elsewhere in this part, all wool which is to be commingled. Each warehouseman who has elected to store in his warehouse wool which is to be commingled shall, when so requested in writing as to any wool by the depositor thereof, mingle such wool with other wool, if any, of the same kind, grade, and approximate shrinkage: *Provided*, That no wool may be commingled for which a receipt is outstanding unless the receipt clearly indicates that such wool is or is to be commingled. No warehouseman shall commingle with wool belonging to any depositor wool which is owned by him solely, jointly, or in common with others.

(b) Before making any change in his policy as to whether he will store in his warehouse wool which is to be commingled, each warehouseman shall file with the Administrator a statement in writing showing the proposed change, the effective date thereof, and the reasons therefor.

§ 738.27 Insurance; requirements.

(a) Each warehouseman, when so requested in writing as to any wool by the depositor thereof or lawful holder of the receipt covering such wool, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such wool while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested against loss or damage by fire or lightning. When insurance is not carried in the warehouseman's name the receipts shall show that the wool is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally, or by telegraph, or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all wool stored in his warehouse.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 738.6 and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which the wool will be insured against loss or damage by fire or lightning.

(c) Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(d) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 738.28 System of accounts.

(a) Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Department, which shall show for each lot of wool received, its weight, the number of bags or bales, its grade when its grade is required to be, or is, ascertained, its location in the warehouse, the dates received for and delivered out of storage, the receipt issued and canceled, and a separate record for each depositor of wool, and such accounts shall include a detailed report of all moneys received and disbursed and of all insurance policies taken out and canceled. In addition, for wool the identity of which is to be preserved, the accounts shall show its identification in accordance with § 738.34, and for wool the identity of which is not preserved the accounts shall show the designation of the lot or pile of which it is a part and the estimate of the shrinkage of such wool stated on the receipt therefor. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(b) Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that, with the written approval of the Department upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Administrator or his representatives. Each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[5 FR 3607, Sept. 10, 1940, as amended at 22 FR 1629, Mar. 14, 1957; 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.29 Reports; copies.

(a) Each warehouseman shall from time to time make such reports as the Administrator or his representative may require, on forms furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

(b) Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part. Copies of grade and weight certificates as are required to be filed by him by § 738.57 shall be retained, as a part of the records of the warehouse, for a period of one year after December 31 of the year in which the receipt based on such certificates is canceled.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[5 FR 3607, Sept. 10, 1940, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.30 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his canceled receipts for auditing to Washington or to such offices of the Service as may be designated from time to time. For the purpose of this section, only such portion as may be designated of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

§ 738.31 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted the warehouseman shall file with the Service a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously, in the place prescribed by § 738.6 and at such other place, accessible to the public, as the Department may from time to time designate, a copy of his current rules and schedule of charges.

§ 738.32 Signs; posting; design.

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain suitable signs on the licensed warehouse, both on the inside and exterior walls, and particularly on doors and usual places of entry, in such manner as would ordinarily be calculated to give the public notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall show the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "Public warehouse."

(c) Such other wording or lettering as is not inconsistent with the purposes of the Act and the regulations in this part and is approved by the Administrator may appear in the sign or signs.

(d) Upon the expiration of his license and during any period of suspension thereof the warehouseman shall immediately remove all references to the license.

(e) The warehouseman shall not permit any sign to remain on his licensed property which might lead to confusion as to the tenancy.

§ 738.33 Examination of warehouses.

Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make any such inspection or examination under this section.

§ 738.34 Identity-preserved wool.

Upon the acceptance by a warehouseman for storage in his warehouse of any lot of wool, the identity of which is to be preserved, he shall store, or cause to be stored, such wool in an individual section or space designated by lot numbers, or by letters, or other clearly distinguishing words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such wool or so place the wool in the warehouses that its identity will not be lost during the storage period.

§ 738.35 Arrangement of wool.

Each warehouseman shall arrange the bags or bales of wool in his warehouse so that each lot can be identified and the bags or bales in each lot readily checked. If tiered the bags or bales may be stored in double rows but one end of each bag so tiered shall face an aisle. Bulk wool shall be so stored that it may readily be measured and the quantity therein estimated. To each lot whether of bagged, baled, or bulk wool shall be secured a tag, which shall always be accessible and plainly visible, showing the lot or pile number and the number of bags or bales and, if bulk wool, the pounds of wool therein. For any wool which has been temporarily removed from a lot for display, sampling, or other purposes proper notation shall be made on the reverse side of the lot tag showing the quantity so removed and its location. Such notation shall be stricken out upon the return of the wool to its lot.

§ 738.36 Wet or fire-damaged wool.

A warehouseman shall not store any wool that is excessively wet in contact with any other wool in the warehouse. A warehouseman shall not store in the same compartment with wool that has not been damaged by fire any bag or lot of wool that has been damaged by fire until the fire-damaged wool has been removed from the bag or lot, and then he shall not store it in contact with wool that has not been so damaged.

§ 738.37 Care of wool and other commodities.

(a) Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to wool in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. The warehouseman shall not handle or store wool in such manner as may tend to injure or damage the wool.

(b) If, at any time, a warehouseman shall handle or receive wool otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to it as not to endanger the wool in his custody as a licensed warehouseman or impair the insurance thereon or his ability to meet his obligations and perform his duties under the act and the regulations in this part.

§ 738.38 Warehouse to be kept clean.

Each warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, and scattered wool. He shall also exercise every precaution to keep his warehouse free of moths and other pests.

§ 738.39 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving wool for storage and delivering wool out of storage every business day, excepting Saturdays when the period may be shorter, for a period of not less than 6 hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section.

(b) If the warehouse is not kept open regularly as required in paragraph (a) of this section, the warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver wool stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor.

§ 738.40 Excess storage.

If at any time a warehouseman is offered wool in such quantity that to store it would result in exceeding his licensed capacity, he shall so arrange the wool as not to obstruct free access thereto and the proper use of sprinkler or other fire protection equipment provided for such warehouse and shall immediately apply to the Administrator to have the licensed capacity increased. Until such increase is granted, no receipt shall be issued for such wool.

§ 738.41 Removal of wool from warehouse.

Unless it becomes absolutely necessary to protect the wool, no wool covered by receipts issued under the act shall be removed from a warehouse, except as provided in § 738.42, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

§ 738.42 Delivery of wool.

Except as may be provided by law or by the regulations in this part, each warehouseman (a) upon proper presentation of a receipt for commingled wool and upon payment or tender of all advances and legal charges shall deliver to the lawful holder of such receipt wool of the kind, grade, quantity, and approximate shrinkage named in such receipt or in the grade certificate covering the particular lot of wool specified by the receipt, and (b) upon proper presentation of a receipt for any wool, the identity of which was to be preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto the identical wool so stored in his warehouse.

§ 738.43 Signers of warehouse receipts; filing names.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to person authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

§ 738.44 Weighing apparatus; examination.

Any weighing apparatus used for ascertaining the weight stated in a receipt or certificate issued for wool stored in a warehouse shall be subject to examination by any officer or agent of the Department. If the Department shall disapprove any such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any wool for the purposes of the act and the regulations in this part.

§ 738.45 Fire loss; report by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Department the occcurrence of such fire and the extent of damage.

FEES

§ 738.46 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated, or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to grade or weigh agricultural products stored or to be stored under provisions of this Act.

[46 FR 63200 Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.47 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of $10 for each 100,000 pounds of storage capacity or fraction thereof, determined in accordance with § 738.12(a), but in no case less than $100 nor more than $500; and

(b)(1) For each licensed warehouse an annual fee at the rate of $10 for each 100,000 pounds of license capacity, or fraction thereof, but in no case shall the fee be less than $400 nor more than $2,000. The licensed capacity shall be that stated in the current warehouse license as determined under § 738.12(a).

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.48 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.49 Return of excess deposit.

The Treasurer of the United States shall hold in a special deposit account each advance deposit made under § 738.48 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

GRADERS AND WEIGHERS

§ 738.50 Applications.

(a) Applications for licenses to grade or to weigh wool under the act shall be made to the Department on forms furnished for the purpose.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of the warehouse or warehouses licensed, or for which application for license has been made, under the act, in which wool sought to be graded or weighed under such license is or may be stored; (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose; (3) satisfactory evidence that he is competent to perform the kind of service for which a license is sought; (4) a statement by the applicant that he agrees to comply with and abide by the terms of the act and the regulations so far as the same may relate to him; and (5) such other information as the Department may deem necessary.

(c) A single application may be made by any person for a license to grade and weigh upon complying with the requirements of this section.

§ 738.51 Examination.

Each applicant for a license as a grader or weigher and each grader or weigher shall, whenever requested by an authorized agent of the Department designated by the Administrator for the purpose, submit to an examination or test to show his ability properly to perform the duties of a licensed grader or weigher.

§ 738.52 Posting of license.

Each grader or weigher shall keep his license conspicuously posted in the office of the warehouse where most of the grading or weighing is done.

§ 738.53 Proper discharge of duties.

Each grader and each weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, grade or weigh and certificate the grade or weight of wool stored or to be stored in a warehouse for which he holds a license, if such wool be offered to him under such conditions as permit proper grading or weighing and the determination of the grade or weight thereof. In every case when the graded wool is to be commingled the grader shall make a careful estimate of its shrinkage. Each such grader or weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No grade certificate or weight certificate shall be issued under the act for wool not stored or not to be stored in a licensed warehouse.

§ 738.54 Grade certificate; form.

Each grade certificate issued under the act by a grader shall be in a form approved for the purpose by the Department, and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Wool Grade Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the wool is or is to be stored; (d) the date of the certificate; (e) the location of the wool at the time of grading; (f) the designation of the lot from which the wool was taken; (g) if the wool is not to be commingled, its identification in accordance with § 738.34; (h) The consecutive number of the certificate; (i) the pounds of each grade of wool covered by the certificate; (j) a blank space designated for the purpose in which, if the identity of the wool is to be preserved, a careful estimate of the shrinkage of the wool may be stated or in which, if the wool is to be commingled, a careful estimate of the shrinkage of the wool shall be stated; (k) the grade of the wool as determined by such grader in accordance with §§ 738.64 through 738.67; (l) the lot or pile number assigned to the grade; (m) the kind of wool (n) that the certificate is issued by a licensed grader under the United States Warehouse Act and the regulations thereunder; and (o) the signature of the grader who graded the wool. In addition the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Service is first secured.

§ 738.55 Weight certificate; form.

Each weight certificate issued under the act by a weigher shall be in a form approved for the purpose by the Department and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Wool Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the wool is or is to be stored; (d) the date of the certificate; (e) if the identity of the wool is to be preserved its identification in accordance with § 738.34; (f) the consecutive number of the certificate; (g) the weight of the wool and, if the wool be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such weigher. In addition the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 738.56 Combined certificate.

The grade and weight of any wool, ascertained by a grader and weigher, may be stated on a certificate meeting the combined requirements of §§ 738.54 and 738.55, if the form of such certificate shall have been approved for the purpose by the Department.

§ 738.57 Copies of certificates.

Each grader and each weigher shall keep for a period of 1 year in a place accessible to persons financially interested, a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the wool covered by the certificate is stored.

§ 738.58 Inspections.

Each grader and each weigher shall permit any duly authorized officer or agent of the Department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 738.33, as far as any such inspection or examination relates to the performance of his duties as a licensed grader or licensed weigher.

§ 738.59 Reports.

Each grader and each weigher shall, from time to time, when requested by the Department, make reports on forms furnished for the purpose by the Service bearing upon his activities as such grader or weigher.

§ 738.60 Suspension or revocation of licenses.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of a grader or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor submitted by the licensee, or when the licensee has ceased to perform the services for which licensed, the Secretary, or his designated representative, may without hearing, suspend or revoke the license issued to such licensee. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a grader or weigher when such licensee has, in any manner, become incompetent or incapacitated to perform his duties as such licensee. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions in this section exist, it shall be his duty to notify in writing the Administrator. Before the license of any grader or weigher is permanently suspended or revoked pursuant to section 12 of the act, such licensee shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 738.72.

§ 738.61 Return of suspended, revoked, terminated licenses.

(a) In case a license issued to a grader or weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the grader or weigher to whom it was originally issued, and it shall be posted as prescribed in § 738.52.

(b) Any license issued under the act and the regulations in this part to a grader or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall expire or be suspended or revoked. Thereupon the license of such grader or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses the licenses of which have been suspended or revoked. Such new license shall be posted as prescribed in § 738.52.

§ 738.62 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a grader or weigher, a duplicate thereof may be issued under the same number.

§ 738.63 Unlicensed persons; misrepresentation.

No person shall in any way represent himself to be a grader or weigher licensed under the act if his license is in suspension or has been revoked.

WOOL GRADING

§ 738.64 Statement of grades.

Whenever the grade of wool is required to be or is stated for the purposes of the act or the regulations in this part, it shall be stated in accordance with §§ 738.64 through 738.67.

§ 738.65 Wool grades; adoption; terms defined.

(a) The official wool grades of the United States within their scope are hereby adopted as the official wool standards for the purposes of the act and the regulations in this part.

(b) Factors other than those included in the official grades and for which no standards of the United States are in effect shall be stated in accordance with any standards approved for the purpose by the Service.

(c) Wool which is reduced in value because of the presence of extraneous matter, or irregularity, or other defect not affecting its grade, such as wrapped with sisal or binder twine, excessively wrapped, dead, cotted, burry, seedy, black, gray, or colored, damaged, carbonizing, kempy, or false packed, shall be so designated.

(d) For the purpose of this section the following terms used in connection with or to describe wool, shall be construed respectively to mean:

(1) *Excessively wrapped.* Wool tied with more wrappings of twine than is necessary to bundle properly folded and rolled fleeces.

(2) *Dead wool.* Wool from dead sheep.

(3) *Cotted wool.* Wool that has felted or matted on the sheep's back.

(4) *Burry wool.* Wool containing burrs removable by hand or mechanical means.

(5) *Seedy wool.* Wool containing seeds, chaff, or other vegetable matter.

(6) *Black, gray, or colored wool.* Entire fleeces or portions of fleeces of black, gray, or colored wool.

(7) *Damaged wool.* Wool damaged by fire, water, moisture, or moths.

(8) *Carbonizing wool.* Wool from which the burrs or other substances can be removed only by carbonizing.

(9) *Kempy wool.* Wool containing kemps, opaque, white fibers, found generally in the fleeces of old or sick sheep.

(10) *False packed.* A fleece so packed as fraudulently to conceal substances entirely foreign to wool.

(11) *Lamb's wool.* The first fleeces shorn from young sheep.

(12) *Buck's.* The heavy, oily fleeces shorn from male sheep.

(13) *Bright.* Bright, white lustrous wool.

(14) *Semibright.* Lustrous wool dulled in color by the foreign matter it contains.

§ 738.66 Examinations; basis of grade.

Whenever the grade of wool is required to be or is stated for the purposes of the act or the regulations in this part, it shall be based upon a careful and thorough examination of the wool, and the grading thereof shall be made under conditions which permit the determination of its true grade.

§ 738.67 Wool standard forms.

Each warehouseman and grader shall keep himself provided with, or have access to, a set of practical forms of the official wool standards of the United States.

CROSS REFERENCES: For official wool standards of the United States, and for forms of the official standards, see 7 CFR Part 31 of this chapter.

ARBITRATION

§ 738.68 Wool arbitration.

(a) Except when agreements have been made in accordance with the United States Arbitration Act (43 Stat. 883; 9 U.S.C. 1-14), in case a question arises as to whether the condition, grade, or shrinkage of the wool was correctly stated in a receipt, or grade certificate issued under the act and the regulations in this part, the licensed warehouseman or the lawful holder of the receipt or certificate concerned, after reasonable notice to the other interested party, may submit the question to an arbitration committee for determination in accordance with this section.

(b) Such arbitration committee shall be composed of three or more disinterested persons who are competent to pass upon the questions involved. If there be a local trade organization such as a board of trade, chamber of commerce, exchange, or inspection department which provides such a committee under a rule or practice acceptable to the Administrator for the purpose, such as committee may determine the question. In the absence of such committee, or if for any good reason not inconsistent with the act and the regulations in this part such committee is not acceptable to either of the parties interested, the complainant and the other party shall each name a member, and the two members so named shall select a third member, who shall constitute the arbitration committee. Each member of any such committee shall at all times be subject, for good cause to the disapproval of the Administrator, and in case any member is so disapproved he shall not thereafter act on an arbitration committee which is considering any questions relating to the same lot of wool unless such disapproval be withdrawn.

(c) It shall be the duty of the interested parties to acquaint the arbitration committee with the exact nature of the question to be determined and all the necessary facts and to permit the committee to examine the receipt, certificate, or wool involved or any papers or records needed for the determination of the question. The committee shall make a written finding setting forth the question involved, the necessary facts, and its determination. Such findings or a true copy thereof shall be filed as a part of the records of the licensed warehouseman involved. It may dismiss the matter without determination upon the request of the complainant, or for noncompliance by the complainant with the law or the regulations in this part, or because it is without sufficient evidence to determine the question, in which case the decision shall be deemed to be against the complainant. Except as otherwise provided by law, its decision shall be final for the purposes of the act and the regulations in this part, unless the Administrator shall direct a review of the question. Any necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the committee shall decide that such expense shall be prorated between the parties.

(d) If the decision of the arbitration committee by that the grade, condition, or shrinkage was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it, and he shall substitute therefor one conforming to the decision of the committee.

[5 FR 3607, Sept. 10, 1940, as amended at 13 FR 8729, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

MISCELLANEOUS

§ 738.69 Bonds required of State warehouses.

Every person applying for a license under section 9 of the act, or licensed thereunder, shall, as such, be subject to all portions of the regulations in this part, except § 738.5, so far as they relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act to accept the custody of wool and to store the same in any of said warehouses may, in lieu of a bond or bonds, complying with §§ 738.11 and 738.12, file with the Secretary a single bond meeting the requirements of the act and the regulations in this part, in such form and in such amount, not less than $5,000, as he shall prescribe, to insure the performance by such person with respect to the acceptance of the custody of wool and its storage in the warehouses in such system for which licenses are or may be issued of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

§ 738.70 Publications.

Publications under the act and the regulations in this part shall be made in such media as the Administrator may from time to time designate for the purpose.

§ 738.71 Violations to be reported.

Every person licensed under the act shall immediately furnish the Department any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 738.72 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130—1.151).

[45 FR 6775, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 738.73 One document and one license to cover several products.

(a) A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such license is desired, a single application, inspection, bond, record, report, or other paper, document, or proceeding relating to such warehouse shall be sufficient unless otherwise directed by the Service.

(b) Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 738.74 Amendments.

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

SOURCE: 10 FR 4964, May 4, 1945; 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

DEFINITIONS

§ 739.1 Meaning of words.

Words used in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 739.2 Terms defined.

When used in the regulations in this part, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) "Beans" means only dry edible beans used for human consumption.

(b) "The act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(c) "Person" means an individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) "Department" means the United States Department of Agriculture.

(e) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(f) "Administrator" means the Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(g) "Designated representative" means the Administrator.

(h) "Service" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(i) "Regulations" means rules and regulations made under the act by the Secretary.

(j) "Warehouse" means, unless otherwise clearly indicated by the context, any building, structure, or other protected inclosure in which beans are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which beans are or may be stored and for which a license has been issued under the act.

(k) "Warehouseman" means, unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing beans and holding a warehouse license.

(l) "License" means a license issued under the act by the Secretary.

(m) "Licensed warehouseman's bond" means a bond required to be given under the act by a licensed warehouseman.

(n) "Licensed inspector" means a person licensed under the act by the Secretary to sample, to inspect, and to grade and to certificate the condition for storage and the grade of beans.

(o) "Licensed weigher" means a person licensed under the act by the Secretary to weigh and to certificate the weight of beans stored or to be stored under the act.

(p) "Receipt" means a warehouse receipt as prescribed by the act and regulations.

(q) "Dockage." See "Pick."

(r) "Pick" includes any material other than beans, together with undeveloped, shriveled, discolored, damaged, split, and small pieces of beans which are picked by hand or eliminated by mechanical means from the lot.

The pick shall be calculated in terms of percentage based on the total weight of the beans including the material to be eliminated.

[10 FR 4964, May 4, 1945, as amended at 13 FR 8729, Dec. 30, 1948; 14 FR 681, Feb. 16, 1949. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 739.3 Application forms.

Applications for licenses under sections 4 and 9 of the act and for amendments thereto shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or his designated representative shall find to be necessary to the consideration of his application.

§ 739.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of beans, that the warehouseman is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the intent of the act for not issuing such license.

§ 739.5 Net assets required.

Any warehouseman conducting a warehouse licensed, or for which application for license has been made, under the act shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 40 cents per hundredweight for the maximum number of hundredweight that the warehouse will accommodate, when stored in the manner customary to the warehouse, as determined by the Administrator, except that the amount of such assets shall not be less than $10,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 739.12(b).

[39 FR 41825, Dec. 3, 1974. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.6 License shall be posted.

Immediately upon receipt of his license or of any amendment thereto under the act, the warehouseman shall post the same and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 739.7 Suspension or revocation of warehouse licenses.

Pending investigation, the Secretary, or his designated representative, whenever he deems it necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent, (b) has parted in whole or in part with his control over the licensed warehouse, (c) is in process of dissolution or has been dissolved, (d) has ceased to conduct such licensed warehouse, or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse.

Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 739.80.

§ 739.8 Return of suspended or revoked warehouse licenses.

When a license issued to a warehouseman terminates, or is suspended, or revoked by the Secretary or his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 739.6.

§ 739.9 Lost or destroyed warehouse licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof or a new license may be issued under the same number.

§ 739.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 739.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing ————, or until the termination of said license(s) in the event of termination prior to the end of the 1 year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1 year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1 year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.12 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of 40 cents per hundredweight for the maximum number of hundredweight that the warehouse will accommodate, when stored in the manner customary to the warehouse for which such bond is required, as determined by the Administrator, but not less than $20,000 nor more than $200,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under this section.

(b) In case of a deficiency in net assets under § 739.5 there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.

[10 FR 4964, May 4, 1945, as amended at 24 FR 3692, May 7, 1959; 39 FR 41825, Dec. 3, 1974. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.13 Amendment to license.

If application is made under § 739.3 for an amendment to a license and no bond previously filed by the warehouseman under the regulations in this part covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and these regulations may be filed in lieu of a new bond.

§ 739.14 New bond required each year.

A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year not more than 30 days before the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him or his designated representative.

§ 739.15 Approval of bond.

No bond, amendment or continuation thereof shall be deemed accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary, or by his designated representative.

WAREHOUSE RECEIPTS

§ 739.16 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for beans stored in a warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse, (2) the license number of the warehouse, (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (4) in the event the relationship between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (5) the tag number given to each lot of beans in accordance with § 739.33, (6) a statement conspicuously placed, whether or not the beans are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado, (7) a blank space designated for the purpose in which the condition of the beans shall be stated, (8) a blank space designated for the purpose in which the variety of the beans shall be stated, (9) the net weight, as well as the dockage or pick, if any, (10) the words "Negotiable," or "Nonnegotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (11) a statement indicating the amount of shrinkage and/or pickage agreed upon between the depositor and the warehouseman, in the case of nonidentity preserved beans.

(b) Every receipt, whether negotiable or nonnegotiable, issued for beans stored in a warehouse shall specify a period, not exceeding one year, for which the beans are accepted for storage under the act and the regulations in this part, but, upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of beans in the warehouse, may issue a new receipt for a further specified period not exceeding one year: *Provided*: (1) In the case of beans stored identity preserved it is first actually determined by a licensed inspector that the beans have not deteriorated and are in proper condition for further storage; and (2) in the case of beans stored on a fungible basis that the warehouseman determines the total quantity of beans covered by outstanding receipts calling for the same grade of beans as called for by the surrendered receipt, that the licensed inspector determines that all beans of the grade in question and stored on a fungible basis are in proper condition for further storage, and that the warehouseman determines that he has sufficient quantity of beans of the proper grade as determined by the licensed inspector to cover all outstanding receipts including the surrendered receipt.

(c) The grade stated in a receipt issued for beans the identity of which is not to be preserved shall be stated as determined by the licensed grader who last graded the beans before the issuance of such receipt; and such receipt shall embody within its written or printed terms the following: (1) That the beans covered by the receipt were inspected and graded by a licensed inspector, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages or other encumbrances on the beans covered by the receipt.

(d) Whenever the grade or other class of beans is stated in a receipt issued for beans stored in a warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 739.73 through 739.75.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the act omitting any information not required to be stated for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945, 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982 .Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.17 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

[29 FR 13369, Sept. 26, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt, the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success and (2) a bond in an amount double the value, at the time the bond is given, of the beans represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 739.19 Approval of form of receipt.

No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Administrator, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945; 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.20 Partial delivery of beans.

If a warehouseman delivers a part only of a lot of beans for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with these regulations for the undelivered portion of the beans. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.

§ 739.21 Return of receipts before delivery of beans.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver beans for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver beans for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.

§ 739.22 Nonnegotiable receipts; releases.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of beans covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of beans covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

§ 739.23 Omission of grade; no compulsion by warehouseman.

No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any beans stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 739.24 Beans must be inspected.

No warehouseman shall accept beans for storage or any other purpose until they have been inspected and approved by a licensed inspector, nor store beans the identity of which is not to be preserved until their grade has been determined by a licensed inspector.

§ 739.25 Insurance; requirements.

(a) Each warehouseman, when so requested in writing by the depositor of beans, or the lawful holder of the receipt for any beans, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such beans while in his custody insured in his own name, to the extent so requested, against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipt shall show that the beans are not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally, or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all beans.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 739.6 and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which beans will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 739.26 Premiums; inspections; reports.

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 739.27 Shrinkage of beans.

When beans are received for storage, the warehouseman and the depositor shall agree upon an amount to be allowed for natural shrinkage and loss caused by rodents while the beans are in storage, and the amount so agreed upon shall be clearly stated in the warehouse receipt.

§ 739.28 Care of beans in storage.

Each warehouseman shall at all times exercise such care in regard to beans in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

§ 739.29 Care of nonlicensed beans or other commodities.

If at any time a warehouseman shall handle beans other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the beans in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provison that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value, or the insurance on beans covered by licensed receipts.

§ 739.30 Records to be kept in safe place.

Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Administrator, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Administrator or his representative. Each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945, as amended at 22 FR 1629, Mar. 14, 1957; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.31 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act, the warehouseman shall file with the Service a dated copy of his rules and schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 739.6, and at such other places, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedule of charges.

§ 739.32 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving beans for storage and delivering beans out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph(b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.

§ 739.33 Tagging identity-preserved beans.

Each warehouseman shall, upon acceptance for storage of any lot of sacked beans or of bulk beans to be specially binned, attach to such lot or bin an identification tag of good quality, or stencil a sufficient number of sacks in the lot in such manner as will readily make possible the identification of the lot at all times. Such tags shall show the lot number, the number of the receipt issued to cover such beans, the number of sacks in the lot, the variety or type of the beans, their grade, if determined, their net weight when they entered storage, and the date they entered storage.

§ 739.34 Arrangement and tagging of stored beans.

Each warehouseman shall so store each lot of beans for which a receipt under the act has been issued that the tag or stencil identification marks thereon, required in § 739.33, are visible and readily accessible, and shall arrange all bags in his warehouse so as to permit making a determination of the number of bags in storage at any time.

§ 739.35 Nonidentity-preserved beans; grading; weighing.

All beans the identity of which is not to be preserved or has not been preserved shall be accepted for and delivered out of storage only on the basis of grades and weights determined by licensed inspectors and weighers.

§ 739.36 Delivery of beans from storage.

Except as may be provided by law or the regulations in this part, each warehouseman, (a) upon proper presentation of a receipt for any beans, other than bulk beans specially binned, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt beans of the grade and quantity specified in such receipt, after making due allowance for such shrinkage as the receipt stipulates, or (b) upon proper presentation of a receipt for any beans the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto the identical beans stored in his warehouse.

§ 739.37 System of accounts.

Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Administrator, or his authorized representative, which shall show for each bag or lot of beans the name of the depositor, the weight of the beans, the number of bags in each lot, the grade when grade is required to be, or is ascertained, the location in the warehouse, the dates received for and delivered out of storage, the receipts issued and canceled, a separate record for each depositor; and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of beans the identity of which is to be preserved the tag number or stencil identification mark mentioned in § 739.33 shall be shown. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[10 FR 4964, May 4, 1945, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.38 Reports.

Each warehouseman shall, from time to time, make such reports as the Service may require, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

§ 739.39 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

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[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.40 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his canceled receipts for auditing to Washington or to such field offices of the Agricultural Marketing Service as may be designated from time to time. For the purpose of this section, only such portion as the Service may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

§ 739.41 Inspection and examination of warehouses.

Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this section.

§ 739.42 Weighing apparatus; inspection.

The weighing apparatus used for ascertaining the weight stated in a receipt or certificate shall be subject to examination by an officer or agent of the Department employed for such purpose. If the Service shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any beans for the purposes of the act and the regulations in this part.

§ 739.43 Warehouse to be kept clean.

Each warehouseman shall keep his warehouse clean and free from trash, excessive dirt, rubbish, and scattered beans. He shall also exercise every precaution to keep his warehouse free of rats or other pests that might cause damage or injury to beans in storage. The warehouseman shall not under any circumstances accept for storage in his warehouse beans showing the presence of weevil or the larvae of weevil, nor continue to keep in storage beans so affected, without treating them in such manner as will destroy such weevil and larvae or with such chemicals as may be approved by the Service for that purpose.

§ 739.44 Fumigation of warehouse.

When necessary, in the opinion of the Administrator or his representative, the warehouseman shall fumigate thoroughly his warehouse with chemicals approved by the Service.

§ 739.45 Damp, dirty, frosted beans; no storage.

A warehouseman shall not, under any circumstances, accept for storage any beans with moisture content in excess of 17 percent and which contain foreign material likely to injure the keeping qualities of the beans or adversely affect their commercial value, or that are otherwise of a condition rendering them unsuitable for storage, but he may accept such beans for conditioning purposes and for storage after conditioning.

§ 739.46 Care in storage of beans.

A warehouseman shall so handle and so store beans as not to injure or damage them in any manner.

§ 739.47 Reconditioning deteriorated beans.

If the warehouseman considers that any beans in his warehouse are out of condition, or becoming so, he shall direct the licensed inspector to examine the beans in question, and, if such inspector finds such beans to be out of condition or becoming so, and he is of the opinion that such beans can be brought back into condition by mechanical or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons and in the manner specified in § 739.48 (b) and (c). If, within 24 hours after the giving of such notice, the owners of such beans have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the beans to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with machinery suitable for the purpose, otherwise in any other warehouse so equipped.

§ 739.48 Procedure in handling deteriorated beans.

(a) If a warehouseman, with the approval of the licensed inspector, shall determine that any beans are deteriorating and that such deterioration can not be stopped, he shall give immediate notice thereof in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the name of the warehouse in which the beans are stored, (2) the quantity, kind, and grade of the beans at the time the notice is given, (3) the actual condition of the beans as nearly as can be ascertained, and the reason, if known, for such condition, and (4) the outstanding receipts covering the beans out of condition, giving the number and date of each such receipt and the quantity, the kind and grade of the beans as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman, (2) to the person who originally deposited the beans, (3) to any other persons known by the licensed warehouseman to be interested in the beans, (4) to the Administrator, and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. A copy of such notice shall be kept as a record of the warehouse. If the holders of the receipts and the owners of the beans are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested to do so, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person interested in any beans or the receipt covering such beans stored in a licensed warehouse may notify the warehouseman of his interest in writing, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such beans and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the beans advertised in accordance with the requirements of this section have not been removed from storage by the owner thereof within seven days from the date of notice of their being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any beans after sending notification of their condition in accordance with this section.

(g) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[10 FR 4964, May 4, 1945, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.49 Excess storage.

If at any time a warehouseman shall be offered for storage in his warehouse beans in excess of the licensed capacity as shown on his license, he shall not accept such beans until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the beans as not to obstruct free access thereto and the proper use of sprinklers or other fire protection equipment provided for such warehouse.

§ 739.50 Removal of beans from storage.

Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any beans from the warehouse or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. Under no circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall beans be removed from the warehouse before the surrender of receipts, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

§ 739.51 Signatures of persons signing receipts.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.

§ 739.52 Signs of tenancy; posting.

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenacy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee; (2) the name of the warehouse; (3) whether the warehouseman is owner or lessee; and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs, not inconsistent with the purpose of the act and the regulations in this part, as may be approved by the Administrator.

(d) Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.

§ 739.53 Fire loss to be reported by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegram to the Administrator the occurrence of such fire and the extent of damage.

§ 739.54 Copies of certificates to be filed with warehouseman.

When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the beans covered by such certificate are stored, and such certificate shall become a part of the records of the warehouseman. Such certificates shall be retained, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which the certificates are issued.

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[10 FR 4964, May 14, 1945, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

Fees

§ 739.55 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to inspect, grade, or weigh agricultural products stored or to be stored under provisions of this Act; except that no fee shall be charged for issuance of a license to an inspector who holds an unsuspended and unrevoked license under the Agricultural Marketing Act of 1946 and regulations thereunder to inspect and grade any beans and to certificate the grade thereof.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.56 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of $10 for each 1,000 hundredweight of storage capacity, or fraction thereof determined in accordance with § 739.12(a), but in no case less than $100 nor more than $500; and

(b)(1) For each licensed warehouse an annual fee computed in accordance with the following table:

Licensed capacity (hundredweight)	Annual fee (dollars)
Less than 90,000	$500
90,100 to 150,000	700
150,100 to 300,000	900
300,100 to 450,000	1,100
450,100 to 600,000	1,300
600,100 to 720,000	1,500
720,100 to 900,000	1,700
900,100 to 1,200,000	1,900
1,200,100 to 1,500,000	2,100
1,500,100 to 3,000,000	2,300
3,000,100 and over	2,500

The licensed capacity shall be that stated in the current warehouse license as determined under § 739.12(a).

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.57 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.58 Return of excess deposit.

Advance deposits made under the regulations in this part shall be forwarded to the Treasurer of the United States for holding until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

LICENSED INSPECTORS AND WEIGHERS

§ 739.59 Inspector's and weigher's application.

(a) Applications for licenses to inspect and grade or to weigh beans under the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by: (1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which beans sought to be inspected and weighed under such license are or may be stored, (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weigher's licenses one month's experience will be sufficient, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him, and (5) such other information as the Service may deem necessary; *Provided,* That when an application for a license to inspect beans is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect beans stored or to be stored in a licensed warehouse and to issue inspectors' certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such beans, it shall not be necessary to furnish such statement as is required by paragraph (b)(2) of this section.

(c) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.

(e) In lieu of compliance with the requirements of paragraph (b) of this section, the license applied for may be granted whenever such applicant furnishes satisfactory evidence that he holds an effective license under the Agricultural Marketing Act of 1946 and regulations thereunder, to inspect and grade such beans and to certificate the grade thereof.

[10 FR 4964, May 4, 1945, as amended at 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954; 40 FR 6475, Feb. 12, 1975; 41 FR 34005, Aug. 12, 1976. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.60 Examination of applicant.

Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department designated by the Administrator for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.

§ 739.61 Posting of license.

Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Service.

§ 739.62 Duties of licensees.

Each inspector and each weigher, when requested, shall without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition, grade, or weight for storage of beans stored or to be stored in a licensed warehouse, if such beans be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the act for beans not stored or not to be stored in a licensed warehouse.

§ 739.63 Inspection certificate; form.

Each inspection certificate issued under the act by a licensed inspector shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Bean Inspection Certificate," (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the beans are or are to be stored, (d) the date of the certificate, (e) the location of the beans at the time of inspection, (f) the identification number or mark of each lot of beans the identity of which is or is to be preserved, given in accordance with § 739.33, (g) the grade, dockage, or pick and condition of the beans for storage at the time of inspection, (h) a statement that the certificate is issued by a licensed inspector, under the United States warehouse act and regulations thereunder, (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the beans, (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 739.64 Weight certificate; form.

Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the Administration, and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Bean Weight Certificate," (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the beans are to be stored, (d) the date of the certificate, (e) the location of the beans at the time of weighing, (f) the identification number or mark of each lot of beans, the identity of which is or is to be preserved, given in accordance with § 739.33, (g) the net weight of the beans, (h) a statement that the certificate is issued by a licensed weigher under the United States warehouse act and the regulations thereunder, and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 739.65 Combined inspection and weight certificate.

The weight, grade, and condition of any beans ascertained by a licensed inspector or a licensed weigher may be stated on a certificate meeting the combined requirements of §§ 739.63 and 739.64, if the form of such certificate shall have been approved for the purpose by the Service.

§ 739.66 Copies of certificates to be kept.

Each licensed inspector and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested in the beans a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the beans covered by the certificate are stored.

§ 739.67 Licensees to permit and assist in examination.

Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department authorized by the Secretary or his designated representative for the purpose to inspect or examine at any time, his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 739.37 as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the act and the regulations in this part.

§ 739.68 Reports.

Each licensed inspector and each licensed weigher shall, from time to time, when requested by the Service, make reports on forms furnished for the purpose by the Service, bearing upon his activities as such licensed inspector or licensed weigher.

§ 739.69 Licenses; suspension or revocation.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify the Administrator in writing. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section 12 of the act, such licensee shall be furnished by the Secretary or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 739.80.

[13 FR 8729, Dec. 30, 1948; 14 FR 121, Jan. 11, 1949. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.70 Suspended or revoked license; return; termination of license.

(a) If a license issued to an inspector or to a weigher is suspended or revoked, by the Secretary, or by his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 739.61.

(b) Any license issued to an inspector or weigher shall automatically be suspended or terminated as to any warehouse whenever the license of such warehouse shall be suspended or revoked. Thereupon the license of such inspector or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary, or his designated representative, shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new licenses shall be posted as prescribed in § 739.61.

§ 739.71 Lost or destroyed licenses.

Upon satisfactory proof to the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof or a new license may be issued under the same or a new number.

§ 739.72 Unlicensed inspector or weigher; misrepresentation.

No person shall in any way represent himself to be an inspector or weigher licensed under the act unless he holds an unsuspended and unrevoked license issued under the act.

BEAN INSPECTION AND CLASSIFICATION

§ 739.73 Statement of classification.

Whenever the variety, grade, or condition of beans is required to be or is stated for the purposes of this act and the regulations in this part, it shall be stated in accordance with §§ 739.74 and 739.75.

§ 739.74 Standards to be used.

The official bean standards of the United States are hereby adopted as the official beans standards for the purposes of the act and regulations.

§ 739.75 Statement of variety, grade, condition.

Whenever the variety, grade or condition of beans is stated for the purpose of this act and the regulations in this part, the terms used shall be correctly applied and shall be so stated as not to convey a false impression of the beans. In case of doubt as to the variety, grade or condition of a given lot of beans, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of beans offered for storage. These samples shall be thoroughly mixed, and after being so mixed, from this mixture by quartering a sufficient quantity shall be taken which shall constitute the sample for the purpose of determining the grade.

APPEAL OF GRADES

§ 739.76 Conditions and procedure of appeal.

(a) If a question arises as to whether the variety, grade or condition of the beans was correctly stated in a receipt or inspection certificate issued under the act or the regulations in this part, the warehouseman concerned or any person financially interested in the beans involved may, after reasonable notice to the other party, submit the question to such representatives of the Service as the Administrator may appoint. The decision of such representatives shall be final, unless the Administrator shall direct a review of the question. Immediately upon making their decision, these representatives shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved.

(b) If the decision of the representatives of the Service be that the variety, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of variety, grade, or condition, in accordance with the findings of the aforesaid representatives.

(c) All necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the Administrator or his representative shall decide that the expense should be prorated between the parties.

MISCELLANEOUS

§ 739.77 Bonds required.

Every person applying for a license, or licensed under section 9 of the act, shall, as such, be subject to all portions of the regulations in this part except § 739.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of beans and to store the same in any of said warehouses, may, in lieu of a bond or bonds complying with §§ 739.11 and 739.12, file with the Secretary a single bond meeting the requirements of the act and the regulations in this part, in such form and in such amount not less than $5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of beans and their storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, or amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.

§ 739.78 Publications.

Publications under the act and the regulations in this part shall be made in such media as the Administrator may from time to time designate.

§ 739.79 Information of violations.

Every person licensed under the act shall immediately furnish the Service any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 739.80 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6776, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.81 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 739.82 Bond for combination warehouse.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse were used for its storage.

§ 739.83 Amendments.

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

PART 740—NUT WAREHOUSES

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AUTHORITY: Sec. 28, 39 Stat. 490 (7 U.S.C. 268).

SOURCE: 41 FR 31163, July 27, 1976, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

DEFINITIONS

§ 740.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 740.2 Terms defined.

For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *Nuts.* Unshelled nuts of the following kinds: American-grown peanuts, pecans, filberts, and English or Persian walnuts; and shelled American-grown peanuts.

(b) *The Act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; (7 U.S.C. 241-273)) as amended.

(c) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) *Department.* The United States Department of Agriculture.

(e) *Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(f) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(g) *Administrator.* The Administrator of the Service or any other officer or employee of that Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his stead.

(h) *Regulations.* Rules and regulations made under the Act by the Secretary.

(i) *Warehouse.* Unless the context otherwise clearly indicates, any building, structure, or other protected enclosure licensed or to be licensed under the Act, in which nuts are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which nuts are or may be stored.

(j) *Warehouseman.* Any person lawfully engaged in the business of storing nuts, who holds an effective warehouseman's license under the Act, or who has applied for such a license.

(k) *License.* A license issued under the Act by the Secretary.

(l) *Warehouseman's bond.* The bond required by the Act to be given by a warehouseman.

(m) *Licensed inspector.* (1) A person licensed under provisions of section 11 of the United States Warehouse Act (7 U.S.C. 241 et seq.), or (2) a Federal employee authorized under provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), or (3) a person licensed under the provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) to inspect, grade, and certificate the grade or other class and/or condition of nuts stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "persons duly licensed to inspect" or "licensed inspector" shall be defined accordingly).

(n) *Licensed weigher.* A person licensed under the provisions of section 11 of the Unites States Warehouse Act (7 U.S.C. 241 et seq.), to weigh and certificate the weight of nuts stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "persons duly licensed to weigh" or "licensed weigher" shall be defined accordingly).

(o) *Receipt.* A licensed warehouse receipt issued under the Act.

(p) *Package.* A bag, sack, box, or other container.

(q) *Ton.* (Short ton) 2,000 pounds.

[41 FR 31163, July 27, 1976, as amended at 42 FR 26646, May 25, 1977. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 740.3 Application form.

Applications for licenses and for amendments of licenses under the Act shall be made to the Administrator upon prescribed forms furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Administrator shall find to be necessary to the consideration of his application.

§ 740.4 All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of nuts by an applicant for a warehouse license must qualify for a license and be licensed under the Act if the applicant is to be licensed to operate as a nut warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Administrator upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of the nonfederally licensed facilities, there would be no likelihood of the interchange, substitution, or commingling of nuts stored in such facilities with nuts stored in the federally licensed facilities. If all such facilities do not qualify for a license or for an exemption under this section, the applicant shall not be licensed under the Act as a nut warehouseman in the city or town in which the facilities in question are located. Each applicant for a nut warehouse license must apply for a license covering all facilities operated by him for the storage of nuts within the same city or town or for exemption as provided in this section. If a licensed nut warehouseman acquires any additional nut storage facilities within the same city or town in which his licensed warehouse is located he shall file promptly an application for a license or an exemption of the additional facilities. No nut storage facility acquired by a licensed nut warehouseman, subsequent to the issuance of his license, in the same city or town as his licensed facilities, shall be used for the storage of nuts until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed nut storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of nuts, until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of nuts by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of nuts.

§ 740.5 Scales; bin and compartment numbers.

(a) Each warehouse must be equipped with suitable scales in good order, and so arranged that all nuts, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the Department and to disapproval by the Administrator. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of nuts for the purposes of this Act, until such disapproval be withdrawn.

(b) Both bulk bins and compartments for sacked nuts of all warehouses licensed under the Act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the Service. Bulk bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlets. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.

§ 740.6 Net assets.

(a) Each warehouseman conducting a warehouse licensed, or for which application for a license has been made under the regulations in this part, shall have and maintain above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least $25 per ton for the maximum number of tons of peanuts, 2 cents per pound for the maximum number of pounds of walnuts or filberts, and/or 3 cents per pound for the maximum number of pounds of pecans, that the warehouse could accommodate when stored in the manner customary to the warehouse as determined by the Administrator: *Provided*, That no person may be licensed as a warehouseman under the regulations in this part unless he has allowable net assets of at least $10,000: *And provided further*, That any deficiency in net assets required above the $10,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 740.14(c). In determining total net assets, credit may be given for insurable property such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. Such insurance shall be in the form of lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the State in which the warehouse is located.

(b) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses under the regulations in this part, the maximum quantity of nuts which all such warehouses will accommodate when stored in the manner customary to the warehouse, as determined by the Administrator, shall be considered in determining whether the warehouseman meets the net assets requirements specified in paragraph (a) of this section.

(c) For the purposes of paragraphs (a) and (b) of this section only, capital stock as such shall not be considered a liability.

§ 740.7 Grounds for not issuing license.

A license for the conduct of a warehouse, or any amendment to a license, under the regulations in this part, shall not be issued if it is found by the Secretary that the warehouse is not suitable for the proper storage of nuts; that the warehouseman does not possess a good reputation, or does not have a net worth of at least $10,000, or is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part; or that there is any other sufficient reason within the intent of the Act for not issuing such license. If all the facilities operated for the storage of nuts by the applicant within the same city or town are not to be licensed under the Act, the applicant shall not be licensed as a nut warehouseman with respect to any of such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in § 740.4.

§ 740.8 License shall be posted.

Immediately upon receipt of his license of any modification or extension thereof under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 740.9 Suspension, cancellation or revocation of warehouse licenses.

(a) Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a warehouseman when he determines that such warehouseman:

(1) Does not have a net worth of at least $10,000;

(2) Has parted, in whole or in part, with his control over the licensed warehouse;

(3) Is in process of dissolution or has been dissolved;

(4) Has ceased to operate such licensed warehouse;

(5) Has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse;

(6) Has made unreasonable or exorbitant charges for services rendered;

(7) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of nuts which is not covered by a license or an exemption as provided in § 740.4, or

(8) Has in any other manner violated or failed to comply with any provision of the Act or the regulations in this part.

(b) Whenever any of the conditions mentioned in paragraphs (a) (1) through (8) of this section shall come into existence, it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked or suspended (other than temporarily pending investigation) for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 740.81.

§ 740.10 Return of suspended or revoked warehouse license.

In case a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, it shall be returned immediately to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as required in § 740.8: *Provided,* That in the discretion of the Administrator a new license may be issued without reference to such suspension.

§ 740.11 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof or a new license may be issued under the same or a new number at the discretion of the Administrator.

§ 740.12 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 740.13 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary a bond containing the following conditions and such other terms as the Secretary may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing ———, or until the termination of said license(s) in the event of termination prior to the end of the 1 year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1 year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1 year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

§ 740.14 Amount of bonds; additional amounts.

(a) The amount of bond to be furnished for each warehouse under the regulations in this part for peanuts shall be fixed at a rate of $25 per ton for the first 10,000 tons of licensed capacity and $20 per ton for all tons of licensed capacity over 10,000 tons; for walnuts and filberts the bond shall be fixed at a rate of 2 cents per pound for the licensed capacity; and for pecans the bond shall be fixed at a rate of 3 cents per pound for the licensed capacity: *Provided*, That in any case the amount of bond shall not be less than $20,000 nor more than $500,000, except as prescribed in paragraph (c) of this section. The licensed capacity shall be the maximum quantity of nuts that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator.

(b) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses in the same State he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State. In such case the warehouses to be covered by the bond shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the $10,000 minimum required under § 740.6, there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency. In any other case in which the Administrator finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

§ 740.15 Amendment to license; bond.

In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under §§ 740.13 through 740.17 covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, that his application for such amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part, may be filed in lieu of a new bond.

§ 740.16 New bond required each year.

A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year prior to the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him.

§ 740.17 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.

WAREHOUSE RECEIPTS

§ 740.18 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for nuts stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act, embody within its written or printed terms the following:

(1) The name of the warehouseman and the designation, if any, of the warehouse.

(2) The license number of the warehouse.

(3) A statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws.

(4) In the event the relationship existing between the warehouseman and and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship.

(5) A statement conspicuously placed, whether or not the nuts are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise.

(6) The kind and type of nut.

(7) The net weight of the nuts.

(8) In the case of nuts the identity of which are to be preserved, the identification or location in accordance with §§ 740.35, 740.36, and 740.38; and

(9) The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for unshelled peanuts stored in a licensed warehouse shall specify that the unshelled peanuts are accepted for storage under the Act and the regulations in this part, for a period not to extend beyond July 1 following the year in which harvested. Upon demand and the surrender of the old receipt by the lawful holder thereof on or before July 1, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of unshelled peanuts in the warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period not to extend beyond March 31 of the year following the date of surrender of the old receipt: *Provided*, That the farmers' stock peanuts are first reinspected by a licensed inspector and found to be in proper condition for further storage and the grade or other class, as determined by the licensed inspector is shown on the new receipt.

(c) Every receipt, whether negotiable or nonnegotiable, issued for shelled peanuts stored in dry storage space in a licensed warehouse shall specify a period, for which the peanuts are to be stored under the Act and the regulations in this part, not to extend beyond May 31 following the year in which harvested. Every receipt, whether negotiable or nonnegotiable, issued for peanuts stored in cold storage space in a licensed warehouse shall specify a period, not exceeding one year, for which the peanuts are accepted for storage under the Act and regulations in this part. Upon demand for issuance of a new receipt, surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified therein and an offer to satisfy the warehouseman's lien, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of peanuts in his warehouse, shall, in the absence of some lawful excuse, issue a new receipt for a further specified period, not exceeding one year.

(d) Every receipt, whether negotiable or nonnegotiable, issued for walnuts, filberts, or pecans stored in a licensed warehouse under ordinary dry storage conditions shall specify a period for which the walnuts, filberts, or pecans are accepted for storage under the Act and the regulations in this part not to extend beyond March 31 following the year in which harvested. Upon demand by the lawful holder and surrender of this receipt on or before March 31, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of walnuts, filberts, or pecans in his warehouse, if he then continues to act as a licensed warehouseman may issue a new receipt for a further specified period not to extend beyond December

31 of the year following the date of surrender of the old receipt: *Provided*, That the walnuts, filberts, or pecans are first reinspected by a licensed inspector and found to be in proper condition for further storage and the grade and condition as determined by the licensed inspector and the year in which the walnuts, filberts, or pecans were harvested are shown on the new receipt: *And provided further*, That such nuts are placed in licensed cold storage space before or immediately following inspection thereof and before the issuance of receipts.

(e) The grade or other class stated in a receipt issued for nuts, shall be stated in such receipt in accordance with § 740.77 as determined by the licensed inspector who last inspected the nuts before the issuance of such reciept, and such receipt shall embody within its written or printed terms the following: (1) That the nuts covered by the receipt were weighed by a licensed weigher, and inspected by a licensed inspector; (2) a form of indorsement which may be used by the depositor or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the nuts covered by the receipt.

(f) If a warehouseman issues a receipt omitting the statement of grade or other class on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "not graded on request of depositor."

(g) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.19 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.20 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the licensed warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman: (1) An affidavit showing that the applicant is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the nuts represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals other than the applicant who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the extent of the amount of the bond.

§ 740.21 Printing of receipts.

Receipts issued by a warehouseman shall be: (a) In form prescribed by the Administrator, (b) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (c) on distinctive paper.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.22 Return of receipts before delivery of nuts.

Except as permitted by law or by this part, a warehouseman shall not deliver nuts for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver nuts for which he has issued a nonnegotiable receipt until such receipt has been returned to him, or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.

§ 740.23 Partial delivery of nuts.

Before delivery is made of the last portion of a lot of nuts covered by a nonnegotiable receipt, the receipt itself shall be surrendered. If a warehouseman delivers a part only of a lot of nuts for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt bearing the same lot number for the undelivered portion of the nuts. In addition to showing the information required by § 740.18, the new receipt shall also indicate the date and number of the receipt which it supersedes.

§ 740.24 Authority for delivery of nuts on nonnegotiable receipts.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of nuts covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of nuts covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine: *Provided,* That if the holder of such nonnegotiable receipts agrees in writing to hold blameless both the warehouseman and bondsman for any loss that might result from improper delivery through receipt of an unauthorized telegram, deliveries may be made on receipt of telegraphic orders to be followed immediately with usual confirmation order.

§ 740.25 Omission of grade; no compulsion by warehouseman.

No warehouseman shall, directly or indirectly, by any means whatever, compel or attempt to compel the depositor of any nuts stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade or other class.

§ 740.26 Persons authorized to sign receipts.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

§ 740.27 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his cancelled receipts for auditing to such field offices of the Service as may be designated from time to time. For the purpose of this section, only such portion as the Service may designate of each cancelled receipt, numbered to correspond with the actual receipt number need be submitted.

DUTIES OF LICENSED WAREHOUSEMEN

§ 740.28 Nuts must be inspected and weighed.

(a) Except in case of identity preserved nuts when grade or other class is omitted at request of depositor, all nuts received into the warehouse shall be inspected and weighed by a licensed inspector and/or weigher and no receipt may be issued under the Act and the regulations in this part until the nuts covered by such receipt have been so inspected and weighed.

(b) When requested by the depositor of nuts the identity of which is to be preserved, a receipt omitting statement of grade or other class but not weight may be issued.

(c) Except as provided in § 740.41, all nuts delivered out of a warehouse must be weighed by a licensed weigher.

(d) Warehousemen must keep stocks of nuts in storage by grades or other class in balance with the grades or other class of nuts represented by outstanding storage obligations for which receipts have been or are to be issued, except when the nuts have unavoidably improved or deteriorated through natural causes. In the case the grades or other class of stored nuts should get out of balance with grades or other class represented by outstanding storage obligations for which receipts have been or are to be issued, the warehouseman shall effect proper adjustments.

§ 740.29 Receipts; basis for issuance.

Before issuing any receipt under the Act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of nuts, first obtain either a copy of, or the original weight certificate, and inspection certificate, if any, covering said lot of nuts. The warehouse records shall clearly identity the certificate(s) used as a basis of issuance of each warehouse receipt, and said inspection and weight certificate shall be kept on file as a record in the warehouseman's office. Such certificates shall be retained for a period of three years after December 31 of the year in which issued.

§ 740.30 Insurance requirements.

(a) Each licensed warehouseman, when so requested in writing as to any nuts by the depositor thereof or lawful holder of the receipt covering such nuts, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such nuts while in his custody as a licensed warehouseman insured in his own name or arrange for insurance otherwise to the extent so requested against loss or damage by fire, lightning and tornado. When insurance is not carried in the warehouseman's name the receipts shall show that the nuts are not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, by telegraph or orally in person or by telephone and with subsequent confirmation in writing, and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all nuts stored in his warehouse.

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts, nor permit his employees to do anything, which might impair or invalidate such insurance.

(c) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 740.8, and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which the nuts will be insured against loss or damage by fire, lightning, and tornado.

(d) Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(e) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 740.31 Care of nuts in warehouses.

Each warehouseman shall at all times exercise such care in regard to nuts in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. Walnuts, filberts, and/or pecans stored under licensed receipts between March 31 and December 31, of the year following the year in which such walnuts, filberts, and/or pecans were harvested must be stored in a licensed cold-storage warehouse or room. Unless otherwise authorized by the Administrator, the warehouseman shall maintain even temperature and humidity in licensed cold-storage space, with temperature not higher than 37° F., nor less than 32° F., and relative humidity not higher than 70 percent nor less than 55 percent at any time while nuts of any kind subject to this Act are in storage. Such licensed cold-storage warehouse or room shall be equipped with automatic recording instruments for temperature and relative humidity approved by the Administrator. Continuous records or charts of temperature and relative humidity shall be kept by the warehouseman.

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§ 740.32 Care of nonlicensed nuts, or other commodities.

If, at any time, a warehouseman shall handle or store nuts otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the nuts in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the act and the regulations in this part. If the warehouseman stores commodities other than those for which he is licensed, licensed receipts shall not be issued therefor.

§ 740.33 Records to be kept in safe place.

Each warehouseman shall provide a fireproof safe, vault, or compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of issued and canceled receipts, except that with the written consent of the Administrator, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Administrator. Each canceled receipt shall be retained by the warehouseman for a period of 6 years after December 31, of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

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[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.34 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act, the warehouseman shall file with the Service a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges, he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 740.8, and at such other places, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedule of charges.

§ 740.35 Numbered tags to be attached to packaged nuts.

Each warehouseman shall, upon acceptance of any lot of nuts in packages or sacks for storage, immediately stencil or mark an identification number or mark on each such package in the lot and attach to such lot a tag of good quality which shall identify the lot. Such tag shall show the lot number, the identification mark on each package, the number of the receipt issued to cover such nuts, the number of packages or sacks in the lot, the kind of nuts, the grade or other class if determined, and the gross weight of the nuts at the time they entered storage.

§ 740.36 Identification tag on stored nuts.

Each warehouseman shall so store each lot of nuts for which a receipt under the Act has been issued that the tag thereon, required by § 740.35 is visible and readily accessible, and shall arrange all packages in his licensed warehouse so as to permit an accurate count thereof and to facilitate sampling of the nuts and inspection for condition.

§ 740.37 Bulk nuts; grade or other class and weights.

Each licensed warehouseman shall accept all nuts for storage and shall deliver out of storage all bulk nuts, other than specially binned or sacked nuts, in accordance with the grade or other class of such nuts as determined by a person duly licensed to inspect such nuts and to certificate the grade or other class thereof, and in accordance with the weights of such nuts as determined by a person duly licensed to weigh such nuts and to certificate the weight thereof, under the Act and the regulations in this part.

§ 740.38 Identity-preserved nuts; bulk storage.

Upon the acceptance for storage in his licensed warehouse of any lot of bulk nuts the identity of which is to be preserved, the warehouseman shall store such nuts in an individual bin or compartment designated by lot or cargo numbers, or by letters, numbers or other clearly distinguishable words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such nuts, or so place the nuts in the warehouse, that their identity will not be lost during the storage period.

§ 740.39 Delivery of nuts.

Except as may be provided by law or the regulations in this part, each licensed warehouseman: (a) Upon proper presentation of a receipt for any nuts, other than identity-preserved nuts, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt nuts of the grade or other class and quantity specified in such receipt, and (b) upon proper presentation of a receipt for any nuts, the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical nuts stored in his licensed warehouse.

§ 740.40 Removal of nuts from storage; conditions.

Except as may be permitted by law or the regulations in this part, a licensed warehouseman shall not remove any nuts for storage from the licensed warehouse until such receipt is first surrendered and canceled. If it becomes absolutely necessary to remove the nuts prior to the surrender of the receipts in order to protect the interests of holders of the receipts, the warehouseman shall promptly notify the Administrator of such removal and the necessity therefor.

§ 740.41 Loading out without weighing.

When the lawful owner of an entire lot of identity preserved nuts requests the warehouseman to deliver said lot without reweighing said nuts, the warehouseman may make such delivery if there is an accurate record of the weight of such nuts when received. Such deliveries shall be made only when the lawful owner agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the nuts in the lot have been surrendered to the warehouseman and canceled.

§ 740.42 Business hours.

(a) Each licensed warehouse shall be kept open for the purpose of receiving nuts for storage and delivering nuts out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously for eight hours between 8 a.m. and 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the telephone number and address where he is to be found, who shall be authroized to deliver nuts stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

§ 740.43 System of accounts.

Each licensed warehouseman shall have and maintain a system of accounts, approved for the purpose by the Service, which shall include but is not limited to a stock record showing for each lot of nuts, the name of the depositor, the weight of the nuts, the number of packages in each lot, the grade or other class when grade or other class is required to be, or is, ascertained, the location, the dates received for and delivered out of storage and the receipts issued and canceled, a separate record for each depositor and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of nuts stored in packages, the tag number mentioned in § 740.35 shall be shown. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.44 Reports.

Each licensed warehouseman shall, from time to time, when requested by the Administrator, make such reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse as the Administrator may require.

§ 740.45 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of 3 years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

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[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.46 Inspections; examinations of warehouses.

Each licensed warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

§ 740.47 Weighing, testing, measuring apparatus; inspection.

The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by the Service. If the Service shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of nuts for the purposes of the Act and the regulations in this part.

§ 740.48 Warehouse to be kept clean.

Each licensed warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of nuts.

§ 740.49 Signs of tenancy; posting.

(a) Each licensed warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license display and maintain appropriate signs on the licensed warehouse in such a manner as will give ample notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of appropriate size and design and shall include the following: (1) The name of the licensee, (2) the license number of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part, subject to the approval of the Service.

(d) Upon the expiration of his license, or during periods of suspension thereof, the warehouseman shall immediately remove such signs or portions thereof as may convey the impression that the warehouse is licensed.

(e) The warehouseman shall not permit any signs to remain on his licensed property which might lead to confusion as to the tenancy.

§ 740.50 Excess storage.

If at any time a warehouseman shall store nuts in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the Service of such excess storage, the reason therefor, and the location thereof.

§ 740.51 Deteriorating nuts; handling.

(a) If the licensed warehouseman, with the approval of the licensed inspector, shall determine that any nuts are deteriorating and that such deterioration cannot be stopped, the licensed warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state: (1) The warehouse in which the nuts are stored; (2) the quantity, kind, and grade or other class of the nuts at the time the notice is given; (3) the actual condition of the nuts as nearly as can be ascertained, and the reason, if known, for such condition; (4) the outstanding receipts covering the amount of nuts out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade or other class of the nuts as stated in each such receipt; and (5) that such nuts will be delivered upon the return and cancellation of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail: (1) To the person holding the receipts, if known to the licensed warehouseman; (2) to the person who originally deposited the nuts; (3) to any other persons known by the licensed warehouseman to be interested in the nuts; and (4) to the Administrator. If the holders of the receipts and owners of the nuts are known to the licensed warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the licensed warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense. Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license and keeping such notice posted so long as the condition exists. A copy of such notice shall be kept as a record of the warehouse.

(d) Any person, interested in any nuts or the receipt covering such nuts stored in a licensed warehouse, may, in writing, notify the licensed warehouseman conducting such licensed warehouse, of the fact of his interest, and such licensed warehouseman shall keep a record of the fact. If such person requests in writing that he be notified regarding the condition of any such nuts and agree to pay the cost of any telegraph or telephone toll charge, such licensed warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the licensed warehouseman from properly caring for any nuts after notification of their condition in accordance with this section.

(f) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.52 Sale at public auction.

If the nuts, advertised in accordance with the requirements of § 740.51 have not been removed from storage by the owner thereof within 5 days from the date of notice of their being out of condition, the licensed warehouseman in whose licensed warehouse such nuts are stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in § 740.51(c).

§ 740.53 Compliance with contracts.

Each warehouseman shall faithfully perform such obligations as a warehouseman as may be assumed by him under contracts with depositors of nuts in his warehouse.

§ 740.54 Fire loss to be reported by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire or by telephone to the Administrator the occurrence of such fire and the extent of damage.

§ 740.55 Grade-weight certificate; filing.

When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the nuts covered by such certificate are stored, and such certificate shall become a part of the records of the licensed warehouseman. Such certificates shall be retained, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which the certificates are issued.

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[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

FEES

§ 740.56 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to inspect, grade, or weigh agricultural products stored or to be stored under provisions of this Act.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.57 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, a reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of $5 for each 100 tons, or fraction thereof, of peanuts, and $10 for each 1,000 hundredweight, or fraction thereof of other nuts of storage capacity determined in accordance with § 740.6, but in no case less than $100 nor more than $1,000; and

(b)(1) For each licensed warehouse an annual fee at the rate of 10¢ for each ton of licensed capacity, or fraction thereof, but in no case shall the fee be less than $400 nor more than $2,000. The licensed capacity shall be that stated in the current warehouse license as determined under § 740.6.

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.58 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.59 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 740.58 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

INSPECTORS AND WEIGHERS

§ 740.60 Inspectors' and weighers' applications.

(a) Application for licenses to inspect and grade or to weigh nuts under section 11 of the Act shall be made to the Administrator on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the warehouseman for whom the applicant will inspect, grade, or weigh nuts under the Act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose.

(b) Each inspector's application shall contain:

(1) Evidence that he can correctly grade nuts in accordance with the official standards of the United States, or in the absence of such standards in accordance with any standards approved by the Administrator, and

(2) Satisfactory evidence that he will be provided with such means or facilities for inspecting and grading nuts as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

(c) Applications for licenses to weigh nuts shall be on forms furnished for the purpose by the Administrator and shall give such information as will show the applicant's experience in weighing nuts.

(d) A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

(e) An applicant shall at any time furnish such additional information as the Department shall find to be necessary to the consideration of his application.

[41 FR 31163, July 27, 1976, as amended at 42 FR 26646, May 25, 1977. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.61 Examination of applicant.

Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the Department, submit to an examination or test to show his ability properly to inspect and grade or to weigh nuts.

§ 740.62 Posting of license.

Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the Service unless authorized by the Service not to do so.

§ 740.63 Duties of inspectors and weighers.

Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect, grade or weigh and certificate the grade or other class or weight of nuts, stored or to be stored, in a warehouse, for which he holds a license, if such nuts be offered to him under conditions as permit proper inspection and weighing and the determination of the grade or other class or weight thereof. No inspector shall issue a certificate of grade or other class for any nuts unless the inspection thereof be based upon a correct and representative sample of the nuts.

§ 740.64 Inspection certification; form.

(a) Except as provided in paragraph (b) of this section, each inspection certificate issued under the Act by an inspector shall be in a form approved for the purpose by the Department, and shall embody the following information within its written or printed terms:

(1) The caption "United States Warehouse Act, Nut Inspection Certificate."

(2) Whether it is an original, a duplicate, or other copy, and that it is not negotiable.

(3) The name and location of the warehouse in which the nuts are or are to be stored.

(4) A statement showing whether the inspection covers nuts moving into or out of the warehouse.

(5) The date of the certificate.

(6) The consecutive number of the certificate.

(7) The approximate amount of nuts covered by the certificate.

(8) The kind of nuts covered by the certificate.

(9) The grade or other class of the nuts, as determined by such licensed inspector, in accordance with § 740.77, and, in the case of nuts for which no official nut standards of the United States are in effect, the standard or description in accordance with which such nuts are graded.

(10) A statement that the certificate is issued by an inspector licensed under the United States Warehouse Act and the regulations thereunder.

(11) The signature of the inspector who inspected and graded the nuts.

In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Service is first secured.

(b) In lieu of the inspection certificate provided for in the preceding paragraph, each inspector, who holds an unsuspended and unrevoked license under the Agricultural Marketing Act of 1946 and regulations thereunder to inspect and grade any nuts and to certificate the grade or other class thereof for shipment or delivery for shipment in interstate or foreign commerce, shall, unless otherwise requested as to any such nuts by the owner or depositor thereof, issue a certificate of grade or other class covering such nuts in accordance with the Agricultural Marketing Act of 1946 and regulations thereunder. Such nuts shall be deemed to be inspected and graded and such certificate of grade or other class shall be deemed to be an inspection certificate for the purposes of the Act and the regulations in this part.

§ 740.65 Copies of inspection certificates to be accessible.

Each inspector shall, as soon as possible after inspecting any nuts and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the nuts are involved at the place designated in § 740.62 a true copy of the inspection certificate issued by him for such nuts or a record of each lot or parcel of nuts inspected or graded by such licensed inspector showing the information contained on such inspection certificate.

§ 740.66 Weight certificate; form.

Each weight certificate issued under the Act by a weigher shall be in a form approved for the purpose by the Service, and shall embody the following information within its written or printed terms:

(a) The caption "United States Warehouse Act, Nut Weight Certificate."

(b) Whether it is an original, a duplicate, or other copy, and that it is not negotiable.

(c) The name and location of the warehouse in which the nuts are or are to be stored.

(d) Whether the nuts are weighed into or out of the warehouse.

(e) The date of the certificate.

(f) The consecutive number of the certificate.

(g) The gross weight of the nuts.

(h) A statement that the certificate is issued by a weigher licensed under the United States Warehouse Act and the regulations thereunder, and

(i) The signature of the weigher.

In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part provided the approval of the Service is first secured.

§ 740.67 Combination grade and weight certificate.

The grade or other class and weight of any nuts ascertained by an inspector and a weigher may be stated on a certificate meeting the combined requirements of §§ 740.64 through 740.66, if the form of such certificate shall have been approved for the purpose by the Service.

§ 740.68 Copies of certificates to be kept.

Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued by him under the regulations in this part, and shall file a copy of each such certificate with the warehouse in which the nuts covered by the certificates are stored.

§ 740.69 Licensees to permit examination of records.

Each inspector and each weigher shall permit any authorized officer or agent of the Department to inspect or examine on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 740.46 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the Act and the regulations in this part.

§ 740.70 Reports by licensees.

Each inspector and each weigher shall, from time to time, if requested by the Service, make reports, on forms approved for the purpose by the Service, bearing upon his activities as such inspector or weigher.

§ 740.71 Licenses; suspension, cancellation or revocation.

Pending investigation, the Secretary may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary or his designated representative may, without hearing, suspend or cancel the license issued to such inspector or weigher. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such licensee: (a) Has ceased to perform services as such inspector or weigher, or (b) Has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under (a) or (b) of this section exists, it shall be the duty of such warehouseman to notify the Service in writing. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section 12 of the Act, such inspector or weigher shall be furnished by the Secretary a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 740.81.

§ 740.72 Suspended or revoked license; termination of license.

(a) In case a license issued to an inspector or weigher is suspended or revoked by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in § 740.62.

(b) Any license issued under the Act and the regulations in this part to an inspector or weigher shall automatically be suspended as to any warehouse whenever the license of such warehouse shall be suspended and shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked. Upon either suspension or termination of any inspector's or weigher's license under this paragraph, such license shall be returned to the Department. In case such license shall apply to other warehouses, the Secretary shall issue to the licensee a new license, omitting the names of the warehouses for which licenses have been revoked or suspended. Such new license shall be posted as prescribed in § 740.62.

§ 740.73 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary.

§ 740.74 Unlicensed inspectors and weighers.

No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he is a licensed inspector or licensed weigher as defined in accordance with the provisions of paragraphs (m) and (n) of § 740.2

[42 FR 26646, May 25, 1977. Redesignated at 50 FR 1814, Jan. 14, 1985]

NUT GRADING

§ 740.75 Classification; statement.

Whenever the type or grade or other class of nuts is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with § 740.77.

§ 740.76 Grades based on inspection and sample.

Whenever the grade or other class of nuts is required to be or is stated for the purposes of the Act or the regulations in this part, it shall be based upon a correct and representative sample of the nuts and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade or other class.

§ 740.77 Standards to be used.

Official Nut Grading Standards of the United States are hereby adopted as the official nut grading standards of the Act and the regulations in this part; *Provided*, That, the grade of nuts for which no official nut standards of the United States are in effect, shall be stated: (a) In accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the nut trade generally in the locality in which the warehouse is located, subject to the approval of the Service, or (b) in the absence of the standards mentioned in (a) of this section, in accordance with any standards approved for the purpose by the Service.

§ 740.78 Conditions and procedure for appeal of grades or other class.

(a) If a question arises as to whether the kind, grade or other class, or condition of nuts was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the nuts involved may, after reasonable notice to the other party, submit the question to the Administrator, who may appoint a committee to make a determination. The decision of the committee shall be final unless the Administrator shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade or other class or condition of any identifiable lot was not correctly stated, a new receipt or certificate embodying therein the statement of kind, grade or other class or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Administrator or his representative shall decide that the expense shall be prorated between the parties.

MISCELLANEOUS

§ 740.79 Publications.

Publications under the Act and the regulations in this part, shall be made in such media as deemed proper by the Administrator.

§ 740.80 Information of violations.

Every person licensed under the Act shall immediately furnish the Administrator any information which comes to the knowledge of such persons tending to show that any provision of the Act or the regulations in this part has been violated.

§ 740.81 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6776, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.82 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 740.83 Bond, assets, and fees for combination warehouse.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 740.84 Amendments.

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.

PART 741—SIRUP WAREHOUSES

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

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EDITORIAL NOTE: Nomenclature changes to Part 741 appear at 7 FR 6807, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948, and 19 FR 57 and 58, Jan. 6, 1954.

DEFINITIONS

§ 741.1 Words in singular form.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 741.2 Terms defined.

For the purpose of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *Sirups.* Sugarcane sirup, maple sirup, or extracted honey, as defined in Service and Regulatory Announcement, Food, Drug and Cosmetic No. 2, Issued July 1944, by the Food and Drug Administration, Department of Health, Education, and Welfare.

(b) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486, 7 U.S.C. 241-273), as amended.

(c) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) *Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Administrator.* The Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his stead.

(f) *Designated representative.* The Administrator.

(g) *Regulations.* Regulations made under the act by the Secretary.

(h) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(i) *Warehouse.* Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which sirup is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which sirup is or may be stored, and for which a license has been issued under the act.

(j) *Warehouseman.* Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing sirup and holding a warehouse license.

(k) *License.* A license issued under the act by the Secretary.

(l) *Licensed warehouseman's bond.* A bond required to be given under the act by a licensed warehouseman.

(m) *Licensed inspector.* A person licensed under the act by the Secretary to inspect, to sample, to grade, and to certificate the grade and condition for storage of sirup.

(n) *Licensed weigher.* A person licensed under the act by the Secretary to weigh and to certificate the weight for storage of sirup.

(o) *Receipt.* A warehouse receipt.

[4 FR 4834, Dec. 13, 1939, as amended at 7 FR 6807, Aug. 29, 1942; 13 FR 8730, Dec. 30, 1948. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 741.3 Application forms.

Applications for licenses and for modifications or extensions of licenses under the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application.

§ 741.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary or his designated representative, that the warehouse is not suitable for the proper storage of sirup, that the warehouseman is incompetent to conduct such warehouse in accordance with the act and this part, or that there is any other sufficient reason within the purposes of the act for not issuing such license.

§ 741.5 Net assets required.

The warehouseman conducting a warehouse licensed or for which application for license has been made under the act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 5 cents per gallon of sugarcane sirup and 10 cents per gallon of maple sirup or honey, of the maximum number of gallons that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator, except that the amount of such assets shall not be less than $5,000, and need not be more than $100,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 741.12.

§ 741.6 License shall be posted.

Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 741.7 Suspension or revocation of warehouse licenses.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Administrator of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the act or of this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 741.73.

§ 741.8 Return of terminated, suspended, or revoked warehouse license.

When a license issued to a warehouseman terminates or is suspended, or revoked, by the Secretary, or his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 741.6: *Provided*, That in the discretion of the Administrator a new license may be issued without reference to the suspension.

§ 741.9 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.

§ 741.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it is or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended or unrevoked license, for the conduct of such warehouse.

WAREHOUSE BONDS

§ 741.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing ———, or until the termination of said license(s) in the event of termination prior to the end of the 1 year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1 year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1 year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.12 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of 5 cents per gallon of sugarcane sirup and 10 cents per gallon of maple sirup or honey, of the maximum number of gallons that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Administrator, but not less than $5,000 nor more than $50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 741.11 through 741.15.

(b) In case of a deficiency in net assets under § 741.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.

§ 741.13 Amendment of license.

If application is made under § 741.3, for an amendment of a license, and no bond previously filed by the warehouseman under §§ 741.11 through 741.15 covers obligations incurred during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and this part, may be filed in lieu of a new bond.

§ 741.14 New bond required each year.

Whenever a license has been issued for a period longer than 1 year, such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by the Secretary, or his designated representative, prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 741.13.

§ 741.15 Approval of bond.

No bond, amendment, or continuation thereof, shall be deemed accepted for the purposes of the act and this part until it has been approved by the Secretary, or his designated representative.

WAREHOUSE RECEIPTS

§ 741.16 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for sirups stored in a warehouse, shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws; (4) in the case of identity-preserved sirup, the lot number given to each lot of sirup, in accordance with § 741.32; (5) a statement conspicuously placed, whether or not the sirup is insured, and if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado; (6) a blank space, designated for the purpose, in which the kind of sirup shall be stated; (7) a blank space, designated for the purpose, in which the locality in which the sirup was produced shall be stated, if known; (8) a blank space, designated for the purpose, in which the condition of the sirup shall be stated; (9) if the sirup is in barrels, drums or jackets, the gross, tare, and net weight, or number of gallons; (10) if in cases, the number of cases and size of containers; (11) if in bulk for storage in tanks, the weight and/or the number of gallons; (12) the word "negotiable" or "nonnegotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; (13) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship.

(b) Every receipt, whether negotiable or nonnegotiable, issued for sirup stored in a warehouse, shall specify a period, not exceeding 1 year, for which the sirup is accepted for storage under the act and this part: *Provided, however,* That no receipt shall be issued for sugarcane sirup stored without refrigeration in barrels for a period extending beyond March 1, following the year in which produced. Upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of sirup in his warehouse, if he then continues to act as a licensed warehouseman, shall issue a new receipt for a further specified period not exceeding 1 year: *Provided,* It is actually determined by a licensed inspector that the sirup has not deteriorated and that it is in proper condition for storage for another year: *And provided further,* That this provision shall not relate to sirup stored in wooden barrels. If the warehouseman continues to act as a public, but not as a licensed warehouseman, he may issue a new non-licensed receipt.

(c) The grade stated in a receipt issued for sirup stored in a warehouse, shall be stated as determined by the licensed inspector who last inspected the sirup before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the sirup covered by the receipt was inspected by a licensed inspector, and (2) a form of indorsement which may be used by the depositor or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the sirup covered by the receipt.

(d) Whenever the grade of sirup is stated in a receipt issued for sirup stored in a warehouse, such grade shall be stated in accordance with §§ 741.66 through 741.68.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor".

(f) If a warehouseman issues a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[4 FR 4834, Dec. 13, 1939, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.17 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

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[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success and (2) a bond in amount double the value, at the time the bond is given, of the sirup represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value in excess of all exemptions and encumbrances, to the extent of double the amount of the bond.

§ 741.19 Approval of form of receipt.

No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Administrator; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[4 FR 4834, Dec. 13, 1939, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.20 Partial delivery of sirup.

If a warehouseman delivers a part only of a lot of sirup for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with this part for the undelivered portion of the sirup. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.

§ 741.21 Return of receipt before delivery of sirup.

Except as permitted by law or by this part, a warehouseman shall not deliver sirup for which he was issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver sirup for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.

§ 741.22 Signatures of persons authorized to direct delivery to be filed with warehouseman.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of sirup covered by such receipt, together with the bona fied signature of such person or persons. No licensed warehouseman shall honor an order for the release of sirup covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine: *Provided,* That if the holder of such nonnegotiable receipt agrees in writing to hold blameless both the warehouseman and bondsman for any loss that might result from improper delivery through receipt of an unauthorized telegram, deliveries may be made on receipt of telegraphic orders to be followed immediately with usual confirmation order.

§ 741.23 Omission of grade; no compulsion by warehouseman.

No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any sirup stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 741.24 Sirup must be inspected.

(a) No warehouseman shall accept sirup for storage until it has been inspected and approved by a licensed inspector.

(b) All sirup, the identity of which is not to be preserved, or has not been preserved, shall be accepted for and delivered out of storage only on the basis of grades and weights or quantities determined by licensed inspectors and weighers.

§ 741.25 Insurance requirements.

(a) Each warehouseman, when so requested in writing by the depositor of or the lawful holder of the receipt for any sirup, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such sirup while in his custody fully insured in his own name against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the sirup is not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business in the State where the warehouse is located. If the warehouseman is unable to procure such insurance, he shall, orally, or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all sirup.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 741.6, and at such other place as the Administrator, or his representative may from time to time designate, a notice stating briefly the conditions under which sirup will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 741.26 Premiums; inspections; reports.

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 741.27 Care of sirup in storage.

Each warehouseman shall at all times exercise such care in regard to sirup in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. If sirup is stored under refrigeration a temperature not in excess of 38° Fahrenheit shall be maintained at all times in the licensed rooms or compartments and temperature records or charts showing correct temperature readings made at least four times daily shall be kept. Such records or charts shall be in such form as the Service may approve.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[4 FR 4834, Dec. 13, 1939, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.28 Care of nonlicensed sirup or other commodities.

If at any time a warehouseman shall handle sirup other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to it as not to endanger the sirup in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the Act and this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of, or impair the insurance on sirup covered by licensed receipts.

§ 741.29 Records to be kept in safe places.

Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt books, copies of receipts issued, and canceled receipts, except that with the written consent of the Administrator, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Administrator or his representative. Each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

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[4 FR 4834, Dec. 13, 1939, as amended at 22 FR 1629, Mar. 14, 1957; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.30 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the act, the warehouseman shall file with the Service a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 741.6, and at such other places, accessible to the public, as the Administrator or his representative, may from time to time designate, a copy of his current rules and schedule of charges.

§ 741.31 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving sirup for storage and delivering sirup out of storage every business day for a period of not less than 6 hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door to the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) If the warehouse is not to be kept open as required by paragraph (a) of this section, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.

§ 741.32 Numbered tags to be attached to each lot of sirup.

Each warehouseman shall, upon acceptance for storage of any lot of sirup the identity of which is to be preserved, take such action as will result in preserving the identity of the product while in storage. He shall immediately assign a lot number to each such lot, and shall plainly and indelibly stamp, stencil, print, or otherwise appropriately mark the lot number on all packages in the lot. He shall attach to such lot a tag of good quality, which shall at all times be clearly visible and shall identify the lot. Such tag shall show the lot number, the number of the receipt issued covering the sirup, the number of packages in the lot, the type or style of packages, the kind of sirup, the grade, if determined, the net weight or number of gallons of sirup in the lot, and the date it entered storage.

§ 741.33 System of accounts.

Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Administrator, or his authorized representative, which shall show for each lot of sirup the name and address of the depositor, the lot number mentioned in § 741.32, the gross, tare, and net weight of sirup if in barrels, drums, or jackets, the number of cases and size of containers, if in cases, the grade, when grade is required to be or is ascertained, the dates received for and delivered out of storage, the receipts issued and canceled, a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[4 FR 4834, Dec. 13, 1939, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.34 Reports.

Each warehouseman shall, from time to time, make such reports as the Administrator may require, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

§ 741.35 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

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[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.36 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his canceled receipts for auditing to Washington or to such field offices of the Service as may be designated from time to time. For the purpose of this section, only such portion as the Service may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

§ 741.37 Inspections and examinations of warehouses.

Each warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

§ 741.38 Inspection of weighing, testing, and measuring apparatus.

The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by any officer or agent of the Department of Agriculture employed for such purpose. If the Service shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of sirup for the purposes of the act and this part.

§ 741.39 Care in storage.

Each warehouseman shall keep the stock stored in his licensed warehouse in an orderly manner, shall provide sufficient aisle space so as to permit easy and ready access to any and all lots of sirup stored therein, and shall so store each lot of sirup as to facilitate sampling of sirup and inspection for condition. The warehouseman shall at all times keep his warehouse clean and free from all litter.

§ 741.40 Water or ash in sirup.

The warehouseman shall not accept for storage in his warehouse any sugarcane sirup which contains more than 30 percent by weight of water or more than 2.5 percent by weight of ash; nor shall he accept maple sirup containing in excess of 35 percent by weight of water or which weighs less than 11 pounds to the gallon; nor shall he accept honey weighing less than 11 pounds 12 ounces to the gallon, or containing in excess of 25 percent of water, or more than 0.25 percent of ash or 8 percent of sucrose.

§ 741.41 Procedure to follow prior to reconditioning deteriorating sirup.

If the warehouseman considers that any sirup in his warehouse is out of condition, or becoming so, he shall direct the licensed inspector to examine the sirup in question, and, if such inspector finds such sirup to be out of condition or becoming so, and he is of the opinion that such sirup can be brought back into condition by reprocessing or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons, and in the manner, specified in § 741.42 (b) and (c). If, within 24 hours after the dispatch of such notice, the owners of such sirup have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the sirup to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with apparatus suitable for the purpose, otherwise in any other warehouse so equipped.

§ 741.42 Deteriorating sirup; handling.

(a) If a warehouseman, with the approval of the licensed inspector, shall determine that any sirup is deteriorating and that such deterioration cannot be stopped by processing or otherwise, he shall give immediate notice thereof in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the sirup is stored; (2) the quantity, kind, and grade of the sirup at the time the notice is given; (3) the actual condition of the sirup as nearly as can be ascertained, and the reason, if known, for such condition; and (4) the outstanding receipts covering the sirup out of condition, giving the number and the date of each such receipt and the quantity, the kind and grade of the sirup as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman; (2) to the person who originally deposited the sirup; (3) to any other persons known by the licensed warehouseman to be interested in the sirup; (4) to the Administrator; and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. A copy of such notice shall be kept as a record of the warehouse. If the holders of the receipts and the owners of the sirup are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested to do so, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person, interested in any sirup or the receipt covering such sirup stored in a licensed warehouse, may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such sirup and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the sirup advertised in accordance with the requirements of this section has not been removed from storage by the owner thereof within seven days from the dispatch of notice of its being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving 7 days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any sirup after sending notification of its condition in accordance with this section.

(g) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[4 FR 4834, Dec. 13, 1939, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.43 Excess storage.

If at any time a warehouseman shall be offered for storage in his warehouse sirup in excess of the licensed capacity as shown on his license, he shall not accept such sirup until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the sirup as not to obstruct free access thereto and the proper use of sprinklers or other fire-protection equipment provided for such warehouse.

§ 741.44 Removal of sirup from storage.

Except as may be provided by law or this part, each warehouseman, (a) upon proper presentation and surrender of a receipt for sirup stored other than as identity preserved and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt sirup of the same grade and quantity specified in such receipt; and, (b) upon proper presentation and surrender of a receipt for sirup the identity of which was to have been preserved during the storage period and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto the identical sirup covered by the surrendered receipt. Should it become necessary to remove sirup from the warehouse to protect the interests of depositors prior to the return and cancellation of receipts, the warehouseman shall immediately notify the Administrator of such removal and of the necessity therefor.

§ 741.45 Signatures of persons to sign receipts to be filed with Department.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.

[4 FR 4834, Dec. 13, 1939; 14 FR 681, Feb. 16, 1949. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.46 Fire loss to be reported by telegraph.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegraph to the Administrator the occurrence of such fire and the extent of damage.

§ 741.47 Copies of inspection or weight certificates to be filed.

When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the sirup covered by such certificate is stored, and such certificate shall become a part of the records of the warehouseman. Such certificates shall be retained, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which the certificates are issued.

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[4 FR 4834, Dec. 13, 1939, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

FEES

§ 741.48 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to inspect, grade, or weigh agricultural products stored or to be stored under provisions of this Act.

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.49 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of $3 for each 5,000 gallons or fraction thereof of storage capacity determined in accordance with § 741.12(a), but in no case less than $100 nor more than $500; and

(b)(1) For each licensed warehouse an annual fee at the rate of $3 for each 5,000 gallons of licensed capacity, or fraction thereof, but in no case shall the fee be less than $400 nor more than $2,000. The licensed capacity shall be that stated in the current warehouse license as determined under § 741.12(a).

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.50 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.51 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 741.50 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be refunded to the party depositing same.

LICENSED INSPECTORS AND WEIGHERS

§ 741.52 Inspector's and weigher's application.

(a) Application for licenses to inspect and grade or to weigh sirup under the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which sirup sought to be inspected and weighed under such license is or may be stored; (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose; (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient; (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and this part so far as the same may relate to him; and (5) such other information as the Service may deem necessary: *Provided*, That when an application for a license to inspect sirup is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect sirup stored or to be stored in a licensed warehouse or warehouses and to issue inspector's certificates therefor, as provided for by the Act and this part, independent of the warehouse receipts issued to cover such sirup, it shall not be necessary to furnish such statement as is required by paragraph (b)(2) of this section.

(c) The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.

[4 FR 4834, Dec. 13, 1939, as amended at 41 FR 34006, Aug. 12, 1976. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.53 Examination of applicant.

Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Administrator for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.

§ 741.54 Posting of license.

Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Service.

§ 741.55 Duties of licensees.

Each inspector and each weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition, grade, or weight for storage of sirup stored or to be stored in a licensed warehouse if such sirup be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the act for sirup not stored or not to be stored in a licensed warehouse.

§ 741.56 Inspection certificate; form.

Each inspection certificate issued under the act by a licensed inspector shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms (a) the caption "United States Warehouse Act Sirup Inspection Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the sirup is or is to be stored; (d) the date of the certificate; (e) the location of the sirup at the time of inspection; (f) the identification number of each lot of sirup, given in accordance with § 741.32; (g) the grade and condition of the sirup for storage at the time of inspection; (h) the name of the locality in which produced, if known; (i) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder; (j) a blank space designated for the purpose in which may be stated any general remarks on the condition of the sirup; and (k) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the act or this part, provided the approval of the Service is first secured.

§ 741.57 Weight certificate; form.

Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the Service, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act Sirup Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the sirup is or is to be stored; (d) the date of the certificate; (e) the location of the sirup at the time of weighing; (f) the identification mark of each lot of sirup given in accordance with § 741.32; (g) the gross, tare, and net weight of the sirup if in barrels, drums, or jackets; or the number of cases and sizes of cans if in cases; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or this part, provided the approval of the Service is first secured.

§ 741.58 Combined inspection and weight certificate.

The grade, condition, and weight of any sirup ascertained by a licensed inspector and/or licensed weigher may be stated on a certificate meeting the combined requirements of §§ 741.56 and 741.57, if the form of such certificate shall have been approved for the purpose by the Service.

§ 741.59 Copies of certificates to be kept.

Each licensed inspector and each licensed weigher shall keep for a period of 1 year in a place accessible to persons financially interested in the sirup, a copy of each certificate issued by him under this part and shall file a copy of each such certificate with the warehouse in which the sirup covered by the certificate is stored.

§ 741.60 Licensees to permit and assist in examination.

Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the act and this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 741.33 as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the act and the regulations in this part.

§ 741.61 Reports.

Each licensed inspector and licensed weigher shall, from time to time, when requested by the Service, make reports on forms furnished for the purpose by the Service, bearing upon his activities as such licensed inspector or licensed weigher.

§ 741.62 Licenses; suspensions; revocation.

Pending investigation, the Secretary or his designated representative may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary or his designated representative may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary or his designated representative may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify in writing the Service. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section 12 of the act, such licensee shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 741.73.

[4 FR 4834, Dec. 13, 1939, as amended at 13 FR 8730, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.63 Return of suspended or revoked licenses; termination of license.

(a) If a license issued to an inspector or to a weigher is suspended or revoked by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 741.54.

(b) Any license issued to an inspector or weigher shall automatically be suspended or terminated as to any warehouse whenever the license of such warehouse shall expire or be suspended or revoked. Thereupon the license of such inspector or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary or his designated representative shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new licenses shall be posted as prescribed in § 741.54.

§ 741.64 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to an inspector or a weigher, a duplicate thereof may be issued under the same number.

§ 741.65 Unlicensed inspector or weigher; misrepresentation.

No person shall in any way represent himself to be an inspector or weigher licensed under the act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the act.

SIRUP INSPECTION AND CLASSIFICATION

§ 741.66 Classification; statement.

Whenever the kind, grade, or other class or condition of sirup is required to be or is stated for the purposes of this act and this part, it shall be stated in accordance with §§ 741.67 and 741.68.

§ 741.67 Standards to be used.

Until such time as official sirup grades of the United States are in effect, the kind, grade, and condition of sirup shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located; (b) in the absence of any State standards, in accordance with the standards, if any, adopted by any sirup organization or by the sirup trade generally in the locality in which the warehouse is located, subject to the disapproval of the Administrator; or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Administrator.

§ 741.68 Statement of kind, grade, condition.

Whenever the kind, grade, or other class or condition of sirup is stated for the purposes of this act and this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the sirup. In case of doubt as to the kind, grade, or condition of a given lot of sirup, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of sirup offered for storage.

APPEAL OF GRADES

§ 741.69 Appeal of grades.

(a) If a question arises as to whether the kind, grade, or condition of the sirup was correctly stated in a receipt or inspection certificate issued under the act or this part the warehouseman concerned or any person financially interested in the sirup involved may, after reasonable notice to the other party, submit the question to the Administrator, who may appoint a committee to make a determination. The decision of the committee shall be final, unless the Administrator shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Administrator or his representative shall decide that the expense should be prorated between the parties.

MISCELLANEOUS

§ 741.70 Bonds required.

Every person applying for a license, or licensed under section 9 of the act shall, as such, be subject to all portions of this part except § 741.5 so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of sirup and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 741.11 and 741.12, file with the Secretary a single bond meeting the requirements of the act and this part, in such form and in such amount not less than $5,000, as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of sirup and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.

§ 741.71 Publications.

Publications under the act and this part shall be made in Service and Regulatory Announcements of the Consumer and Marketing Service and such other media as the Administrator may from time to time designate for the purpose.

§ 741.72 Information of violations.

Every person licensed under the act shall immediately furnish the Administrator any information which comes to the knowledge of such person tending to show that any provision of the act or this part has been violated.

§ 741.73 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130—1.151).

[45 FR 6776, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.74 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document, or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

[4 FR 4834, Dec. 13, 1939. Redesignated at 13 FR 8730, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.75 Amount of assets and bond needed for combination warehouses.

Where such a license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the sections applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

[4 FR 4834, Dec. 13, 1939. Redesignated at 13 FR 8730, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 741.76 Amendments.

Any amendment or revision of this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

[4 FR 4834, Dec. 13, 1939. Redesignated at 13 FR 8730, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

PART 742—COTTONSEED WAREHOUSES

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

SOURCE: SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

DEFINITIONS

§ 742.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 742.2 Terms defined.

For the purpose of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator.* The Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(e) *Regulations.* Rules and regulation made under the act by the Secretary.

(f) *Service.* The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(g) *Warehouse.* Any building, structure, or other protected inclosure in which cottonseed is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cottonseed is or may be stored.

(h) *Warehouseman.* Any person lawfully engaged in the business of storing cottonseed.

(i) *Cottonseed.* Prime cottonseed, cool, clean and not containing in excess of 1 percent foreign matter nor in excess of 10 percent moisture; sound and not containing in excess of 6 percent damaged or immature seed, and shall be untreated by chemical process: *Provided,* That if the warehouse is equipped with such cooling and conditioning equipment as may be acceptable to the Department, or if the cottonseed is in sacks containing not more than 100 pounds to the sack and stored in such manner as the Administrator, or his representatives, may approve, the cottonseed may have a moisture content not in excess of 12 percent.

(j) *License.* A license issued under the act by the Secretary.

(k) *Licensed warehouse.* A warehouse for the conduct of which a license has been issued.

(l) *Licensed warehouseman's bond.* A bond required to be given under the act by a licensed warehouseman.

(m) *Licensed grader.* A person licensed under the act by the Secretary to grade and to certificate the grade or other class of cottonseed stored or to be stored in a licensed warehouse.

(n) *Licensed weigher.* A person licensed under the act by the Secretary to weigh and certificate the weight of cottonseed stored or to be stored in a licensed warehouse.

(o) *Licensed inspector.* A person licensed under the act by the Secretary to inspect, to sample, and to certificate the condition for storage of cottonseed.

(p) *Receipt.* A warehouse receipt.

(q) *Bag.* A sack or other package.

(r) *State.* A State, Territory, or District of the United States.

[SRA, BAE 102, as amended July 14, 1931, and at 13 FR 8730, Dec. 30, 1948. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 742.3 Application form.

Applications for licenses under sections 4 and 9 of the act and for modifications or extensions of licenses under section 5 of the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application by the Secretary.

§ 742.4 Issuance of license; conditions.

(a) A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse is not suitable for the proper storage of cottonseed, that the warehouseman is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the purposes of the act for not issuing such license.

(b) A building acceptable for storage of cottonseed shall be of sound construction, with sound floors, and, if the seed is not stored in accordance with either paragraphs (e), (f), or (g) of this section, it shall be separated into bins or compartments.

(c) An extra licensed bin or compartment shall be maintained at all times with a storage capacity equal to the greatest number of tons that can be stored in any one bin or compartment, except as otherwise provided in paragraphs (e), (f), and (g) of this section. No cottonseed shall be stored in this extra bin or compartment except when necessary to move seed from another bin or compartment to prevent the seed from going out of condition.

(d) A conveying system must be provided throughout the entire warehouse, passing through or accessible to each bin or compartment in such a way that the cottonseed can be moved rapidly when deemed necessary to maintain it in proper condition.

(e) A system of air cooling may be installed in the warehouse. If, in the discretion of the Administrator or his representative, it shall be determined that a warehouse equipped with a cooling system does not need bins, it shall not be necessary to construct bins in such warehouse.

(f) If tanks are used for the storage of cottonseed both a conveying system and an approved air cooling system must be installed and maintained in good working order.

(g) If cottonseed is stored in bags no special type of building is required other than one of sound construction, and with sound floors and of such character as to keep the cottonseed dry. No system of conveying or air cooling is required in bag storage.

[SRA, BAE 102, as amended July 11, 1929. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.5 Net assets required.

The warehouseman conducting a warehouse licensed, or for which application for license has been made under the act, shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least $5 per ton of the maximum number of tons that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator, except that the amount of such assets shall not be less than $5,000, and need not be more than $100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 742.13(b).

§ 742.6 Modification or extension of license.

Each application for a modification or extension of a license under section

5 of the act shall be made to the Secretary, upon a form prescribed for the purpose and furnished by the Administrator, shall be in English, shall be signed by the applicant, and shall be filed with the Secretary not less than 30 days before the date of the termination of the license then in effect.

§ 742.7 License shall be posted.

Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 742.8 Suspension or revocation of warehouse licenses.

Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Administrator of the existing condition. Before a license is permanently suspended, revoked, or canceled for any violation of, or failure to comply with, any provision of the act or of the regulations in this part or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 742.84.

[SRA, BAE 102, as amended Sept. 1926, and at 13 FR 8730, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.9 Return of suspended or revoked warehouse license.

In case a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued and it shall be posted as prescribed in § 742.7: *Provided,* That in the discretion of the Administrator a new license may be issued without reference to the suspension.

§ 742.10 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.

§ 742.11 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.

WAREHOUSE BOND

§ 742.12 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing ———, or until the termination of said license(s) in the event of termination prior to the end of the 1 year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1 year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1 year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.13 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of $5 per ton or fractional part thereof of the maximum number of tons that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Administrator, but not less than $5,000 nor more than $50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required, under §§ 742.12 through 742.16, but the maximum amount of the bond shall be raised to $100,000.

(b) In case of a deficiency in net assets under § 742.5, there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) In case the Secretary finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section, a further amount, fixed by him, to meet such conditions.

§ 742.14 Extension bond.

In case an application is made under § 742.3 for a modification or an extension of a license and no bond previously filed by the warehouseman under §§ 742.12 through 742.16 covers obligations arising during the period of such modification or extension, the warehouseman shall, when notice has been given by the Secretary that his application for such modification or extension will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part, may be filed in lieu of a new bond.

§ 742.15 New bond required each year.

Whenever a continuous form of license has been issued such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 742.14.

§ 742.16 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary.

WAREHOUSE RECEIPTS

§ 742.17 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for cottonseed stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) the tag number given to each bag or lot of cottonseed in accordance with § 742.36; (5) a statement, conspicuously placed, whether or not the cottonseed is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or flood; (6) a blank space designated for the purpose in which the condition of the cottonseed shall be stated; (7) the moisture content of the cottonseed at the time of storage; (8) the bin or compartment number in which the cottonseed is stored, if stored in bulk; (9) the words "Not Negotiable", or "Negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and (10) a statement indicating the amount of shrinkage agreed upon between the depositor and the warehouseman.

(b) Every receipt, whether negotiable, or nonnegotiable, issued for cottonseed stored in a licensed warehouse shall specify a period, for which the cottonseed is accepted for storage under the Act and the regulations in this part not to extend beyond July 1 following the year in which harvested. Upon demand and the surrender of the old receipt by the lawful holder thereof on or before July 1, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of cottonseed in the warehouse, if he then continues to act as a licensed warehouseman, may either extend the old receipt by making a proper notation thereon or issue a new receipt for a further specified period not exceeding 3 months: *Provided*, That receipts covering seed stored in sacks as specified in § 742.2(l) may be extended or new receipts issued for a further period not extending beyond June 30 following the second crop year in which the seeds were harvested, and provided it is actually determined in either case that the quality of the cottonseed has not been impaired, but in no event shall cottonseed of two different crop years be stored in the same bin, lot, or compartment. If receipts are extended by endorsements, such endorsement shall be made across the face of the receipt, shall be signed and dated by the licensed warehouseman as of the date of the extension, and shall read as follows: "This receipt extended in accordance with the act and regulations not to extend beyond ———."

(c) The grade stated in a receipt issued for cottonseed, stored in a licensed warehouse, shall be stated in such receipt as determined by the licensed grader who last graded the cottonseed before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the cottonseed was inspected by a licensed inspector, graded by a licensed grader, and weighed by a licensed weigher; (2) a form of indorsement which may be used by the depositor or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the cottonseed covered by the receipt.

(d) Whenever the grade or other class of the cottonseed is stated in a receipt issued for cottonseed stored in a licensed warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 742.77 through 742.79.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[SRA, BAE 102, as amended July 14, 1931, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.18 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.19 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the licensed warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the cottonseed represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) a surety company which is authorized to do business, and is subject to service or process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of its exemptions and encumbrances, to the extent of double the amount of the bond.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.20 Approval of form of receipt.

No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Administrator, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

§ 742.21 Partial delivery of cottonseed.

(a) If a warehouseman is requested to deliver a part only of cottonseed stored in one bin or compartment for which he has issued negotiable receipts under the act, and such delivery is made in such a manner that no accurate record of the weight of the portion delivered can be ascertained, he shall take up and cancel all receipts covering the entire contents of the bin or compartment before making such partial delivery and no receipt shall be issued for the undelivered portion until the weight of such undelivered seed has been determined.

(b) If a warehouseman is requested to deliver a part only of a lot of cottonseed for which he has issued a negotiable receipt under the act, and he can by actual accurate weight ascertain the amount to be delivered, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the cottonseed. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.

§ 742.22 Return of receipts before delivery of cottonseed.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cottonseed for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver cottonseed for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof.

§ 742.23 Authority for delivery of cottonseed on nonnegotiable receipt.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of cottonseed covered by such receipt, together with the bona fide genuine signature of such person or persons. No licensed warehouseman shall honor an order for the release of cottonseed covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.

§ 742.24 Receipts for storage; one bin; several bins.

Any number of receipts may be issued for cottonseed in any one bin or compartment but a receipt shall not be issued for a lot of seed, a part of which is stored in one bin or compartment and a part in another bin or compartment.

§ 742.25 Omission of grade; no compulsion by warehouseman.

No licensed warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any cottonseed stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 742.26 Cottonseed must be inspected.

No licensed warehouseman shall receive into his licensed warehouse for storage cottonseed other than as defined in § 742.2(i). Neither shall he receive such seed for storage until it has been inspected by an inspector licensed under this act and found by him to be in proper condition and suitable for storage.

[SRA, BAE 102, as amended Sept. 2, 1927. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.27 Insurance requirements.

(a) Each licensed warehouseman when so requested in writing as to any cottonseed by the depositor thereof or lawful holder of the receipt covering such cottonseed shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such cottonseed while in his custody as a licensed warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested against loss or damage by fire, lightning, tornado, or flood. When insurance is not carried in the warehouseman's name the receipts shall show that the cottonseed is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all cottonseed stored in his warehouse.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 742.7 and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which the cottonseed will be insured against loss or damage by fire, lightning, tornado, or flood.

§ 742.28 Premiums; inspections; reports.

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of this part, pay such premium, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 742.29 Insurance; collection and payment.

Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of this part, and shall, as soon as collected, promptly pay over to the persons concerned, any portion of such moneys which they may be entitled to receive from him.

§ 742.30 Shrinkage; agreement.

At the time cottonseed is received for storage the warehouseman and the depositor shall agree upon an amount to be allowed for shrinkage while the cottonseed is in storage, such shrinkage to include loss caused by natural drying out of the cottonseed, but in no event shall the total amount of shrinkage exceed 5 percent of the weight of the cottonseed at the time it entered storage. In case no agreement as to shrinkage has been made, the difference in the moisture content of the cottonseed at the beginning of the storage period and at the time of delivery shall form a basis for calculating shrinkage.

§ 742.31 Care of cottonseed in storage.

Each warehouseman shall at all times exercise such care in regard to cottonseed in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. He shall also equip his warehouse with thermometers to determine the temperature of the cottonseed while in storage and shall make readings of the thermometers with such frequency as the Administrator or his representatives may direct, and permanently record the same, but in no event shall such readings be made less frequently than every third working day. If the cottonseed attains a temperature of 110° F. the warehouseman shall immediately take such action as is necessary to lower the temperature. If the depositor of the cottonseed or any other person to whom he may have transferred title or interest in the cottonseed desires to make temperature determinations he shall be permitted to do so in company with the warehouseman or the warehouseman's representative.

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[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.32 Care of nonlicensed cottonseed, or other commodities.

If, at any time, a warehouseman shall handle or store cottonseed otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cottonseed in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the act and the regulations in this part.

§ 742.33 Records to be kept in safe place.

Each warehouseman shall provide a metal fireproof safe, a fireproof vault or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued and canceled receipts, except that with the written consent of the Administrator, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Administrator or his representative. Each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

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[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 22 FR 1629, Mar. 14, 1957; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.34 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the Administrator a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Administrator a statement in writing showing the proposed change and the reasons therefor. Each licensed warehouseman shall keep exposed conspicuously in the place prescribed by § 742.7, and at such other place, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedule of charges.

§ 742.35 Business hours.

(a) Each licensed warehouse shall be kept open for the purpose of receiving cottonseed for storage and delivering cottonseed out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cottonseed stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

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[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.36 Numbered tags to be attached to cottonseed.

Each warehouseman shall, upon acceptance for storage of any lot of sacked cottonseed, immediately attach to such lot a tag of good quality which shall identify the lot. Such tag shall show the lot number, the identification mark on each bag, the number of the receipt issued to cover such cottonseed, the number of sacks in the lot, the grade, if determined, and the gross weight of the cottonseed at the time it entered storage.

[SRA, BAE 102, as amended July 14, 1931. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.37 Identification tag.

Each warehouseman shall so store each lot of cottonseed for which a receipt under the act has been issued that the tag thereon, required by § 742.36, is visible and readily accessible, and shall arrange all bags in his licensed warehouse so as to permit an accurate count thereof.

§ 742.38 Grade and weight determinations.

Each licensed warehouseman shall accept all cottonseed for storage and shall deliver out of storage all bulk cottonseed, other than specially binned or sacked cottonseed, in accordance with the grade of such cottonseed as determined by a person duly licensed to grade such cottonseed and to certificate the grade thereof, and in accordance with the weights of such cottonseed as determined by a person duly licensed to weigh such cottonseed and to certificate the weight thereof, under the act and the regulations in this part, and in accordance with the agreement regarding shrinkage as shown by the terms of the receipt or in the absence of such agreement in accordance with § 742.30.

§ 742.39 Bulk storage of identity-preserved cottonseed.

Upon the acceptance by a licensed warehouseman, for storage in his licensed warehouse, of any lot of bulk cottonseed the identity of which is to be preserved, he shall store, or cause to be stored, such cottonseed in an individual bin or compartment designated by lot numbers or letters, or other clearly distinguishable words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such cottonseed or so place the cottonseed in the warehouse that its identity will not be lost during the storage period.

§ 742.40 Delivery of cottonseed; conditions.

Except as may be provided by law or the regulations in this part, each licensed warehouseman, (a) upon proper presentation of a receipt for any bulk, other than specially binned cottonseed, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt cottonseed of the grade and quantity specified in such receipt, after making due allowance for shrinkage as provided in the regulations in this part, and (b) upon proper presentation of a receipt for any cottonseed the identity of which was to have been preserved during the storeage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical cottonseed stored in his licensed warehouse.

§ 742.41 System of accounts.

Each licensed warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Administrator, which shall show for each bag or lot of cottonseed, the name of the depositor, the weight of the cottonseed, the number of bags in each lot, the grade when grade is required to be, or is ascertained, the location, the dates received for and delivered out of storage and the receipts issued and canceled, and a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of cottonseed stored in bags, the tag number mentioned in § 742.36 shall be shown. There shall also be kept a record or chart for each bin, showing the temperature of cottonseed in storage as determined by the readings required by § 742.31, and such other information as the Administrator may require. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.42 Reports.

Each licensed warehouseman shall, from time to time, when requested by the Administrator, make such reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse as the Administrator may require.

§ 742.43 Canceled receipts; auditing.

Each warehouseman, when requested by the Service shall forward his canceled receipts for auditing to such field offices of the Service as may be designated from time to time. For the purpose of this section, only such portion as the Service may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

§ 742.44 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.45 Inspection and examination of warehouse.

Each licensed warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

§ 742.46 Weighing apparatus; inspection.

The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cottonseed stored in a licensed warehouse, shall be subject to examination by the officer or agent of the Department of Agriculture designated by the Administrator for the purpose. If the Service shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cottonseed for the purposes of the act and the regulations in this part.

§ 742.47 Warehouse to be kept clean.

Each licensed warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, and scattered cottonseed.

§ 742.48 Excess storage.

A warehouseman shall not store cottonseed in his licensed warehouse in excess of the capacity thereof determined in accordance with § 742.13(a).

§ 742.49 Removal from storage.

Except as may be permitted by law or the regulations in this part, a licensed warehouseman shall not remove any cottonseed for storage from the licensed warehouse or the part thereof designated in the receipt, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall cottonseed be removed from the licensed warehouse, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

§ 742.50 Storage of wet cottonseed prohibited.

A warehouseman shall not under any circumstances accept for storage any cottonseed in his licensed warehouse that is wet or otherwise of a condition rendering it unsuitable for storage.

§ 742.51 Storage to prevent damage.

A warehouseman shall not handle or store cottonseed in such manner as will injure or damage it or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise. If a licensed warehouseman accepts cottonseed for storage in bulk, unless his warehouse is equipped with both a conveyor and a cooling system, he shall not store such seed in an amount greater than 500 tons in any one bin or compartment.

§ 742.52 Deteriorating cottonseed; handling; notice.

(a) If the licensed warehouseman, with the approval of the licensed inspector, shall determine that any cottonseed is deteriorating and that such deterioration cannot be stopped, the licensed warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the cottonseed is stored; (2) the quantity, kind, and grade of the cottonseed at the time the notice is given; (3) the actual condition of the cottonseed as nearly as can be ascertained, and the reason, if known, for such condition; (4) the oldest outstanding receipts covering the amount of cottonseed out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade of the cottonseed as stated in each such receipt; and (5) that such cottonseed will be delivered upon the return and cancellation of the receipt therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts, if known to the licensed warehouseman; (2) to the person who originally deposited the cottonseed; (3) to any other persons known by the licensed warehouseman to be interested in the cottonseed; and (4) to the Administrator. If the holders of the receipts and the owners of the cottonseed are known to the licensed warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the licensed warehouseman shall, whether or not requested to do so, also immediately notify such persons by telegraph or telephone at their expense.

Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. A copy of such notice shall be kept as a record of the warehouse.

(d) Any person, interested in any cottonseed or the receipt covering such cottonseed stored in a licensed warehouse, may, in writing, notify the licensed warehouseman, conducting such licensed warehouse, of the fact of his interest, and such licensed warehouseman shall keep a record of the fact. If such person requests in writing that he be notified regarding the condition of any such cottonseed and agrees to pay the cost of any telegraph or telephone charge, such licensed warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the licensed warehouseman from properly caring for any cottonseed after notification of its condition in accordance with this section.

(f) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.53 Sale of deteriorating cottonseed.

Subject to State law, if the cottonseed advertised in accordance with the requirements of § 742.52 has not been removed from storage by the owner thereof within five days from the date of notice of its being out of condition, the licensed warehouseman in whose licensed warehouse such cottonseed is stored may immediately sell the same at public auction at the expense and for the account of the owner. Before such public sale is determined upon, the warehouseman shall immediately notify the Administrator by wire.

§ 742.54 Compliance with contracts.

Each warehouseman shall faithfully perform such obligations as a warehouseman as may be assumed by him under contracts with depositors of cottonseed in his warehouse.

[14 FR 3829, July 13, 1949. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.55 Fire loss to be reported by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Administrator or his representative the occurrence of such fire and the extent of damage.

§ 742.56 Grade or weight certificate; filing.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cottonseed covered by such certificate is stored, and such certificate shall become a part of the records of the licensed warehouseman. Such certificates shall be retained, as a part of the records of the warehouse, for a period of 3 years after December 31 of the year in which the certificates are issued.

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[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.57 Identity-preserved cottonseed; nonstorage.

Subject to the provisions of section 13 of the act, a licensed warehouseman may elect not to receive cottonseed for storage the identity of which is to be preserved while in storage.

FEES

§ 742.58 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to inspect, grade, or weigh agricultural products stored or to be stored under provisions of this Act.

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.59 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of $10 for each 1,000 tons of storage capacity, or fraction thereof determined in accordance with § 742.13, but in no case less than $100 nor more than $500; and

(b)(1) For each licensed warehouse an annual fee at the rate of $10 for each 1,000 tons of licensed capacity, or fraction thereof, but in no case shall the fee be less than $400 nor more than $2,000.

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.60 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

[46 FR 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.61 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 742.60 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

[SRA, BAE 102, as amended Sept. 1926, and at 3 FR 1400, June 14, 1938. Redesignated at 50 FR 1814, Jan. 14, 1985]

LICENSED INSPECTORS, LICENSED GRADERS, AND LICENSED WEIGHERS

§ 742.62 Inspector's, grader's, weigher's application.

(a) Application for licenses to inspect, to grade, or to weigh cottonseed under the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act in which cottonseed sought to be inspected, graded, and weighed under such license is or may be stored; (2) a statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose; (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient; (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (5) such other information as the Administrator may deem necessary: *Provided*, That when an application for a license to grade cottonseed is filed by a person who does not intend to grade cottonseed for any particular licensed warehouseman but who does intend to grade cottonseed stored or to be stored in a licensed warehouse and to issue grade certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such cottonseed, it shall not be necessary to furnish such statement as is required by paragraph (b)(2) of this section.

(c) The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application by the Secretary.

(d) A single application may be made by any person for a license to inspect, to grade, and to weigh upon complying with all the requirements of this section.

[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 41 FR 34006, Aug. 12, 1976. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.63 Examination of applicant.

Each applicant for a license as an inspector, a grader, or a weigher, and each licensed inspector, licensed grader, or licensed weigher shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Administrator for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.

§ 742.64 Posting of license.

Each licensed grader shall keep his license conspicuously posted in the office where all or most of the grading is done and each licensed inspector or weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Administrator.

§ 742.65 Duties of licensees.

Each licensed inspector, each licensed grader, and each licensed weigher when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms inspect, grade, or weigh and certificate the condition for storage, grade, or weight of cottonseed stored or to be stored in a licensed warehouse for which he holds a license, if such cottonseed be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such inspector, grader, or weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection, grade, or weight certificate shall be issued under the act for cottonseed not stored or not to be stored in a licensed warehouse.

§ 742.66 Inspection certificate; form.

Each inspection certificate issued under the act by a licensed inspector shall be in a form approved for the purpose by the Administrator, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cottonseed Inspection Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cottonseed is or is to be stored; (d) the date of the certificate; (e) the location of the cottonseed at the time of inspection; (f) the identification number or mark of each bag of cottonseed, if in bags, given in accordance with § 742.36; (g) the condition of the cottonseed for storage at the time of inspection; (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder; (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the cottonseed; (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 742.67 Grade certificate; form.

Each grade certificate issued under the act by a licensed grader shall be in a form approved for the purpose by the Administrator and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cottonseed Grade Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cottonseed is or is to be stored; (d) the date of the certificate; (e) the location of the cottonseed at the time of grading; (f) the identification number or mark of each bag of cottonseed, if in bags, given in accordance with § 742.36; (g) the grade or other class of each bag or lot of cottonseed covered by the certificate, in accordance with §§ 742.77 through 742.79 as far as applicable, and the standard or description in accordance with which the grade is made; (h) the approximate amount of cottonseed covered by the certificate; (i) that the certificate is issued by a licensed grader under the United States Warehouse Act and regulations thereunder; and (j) the signature of the licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 742.68 Weight certificate; form.

Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the Administrator, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cottonseed Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cottonseed is or is to be stored; (d) the date of the certificate; (e) the location of the cottonseed at the time of weighing; (f) the identification number or mark of each bag of cottonseed, if in bags, given in accordance with § 742.36; (g) the gross weight of the cottonseed; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 742.69 Combination certificate; form.

The condition, grade, and weight of any cottonseed, ascertained by a licensed inspector, a licensed grader, and a licensed weigher may be stated on a certificate meeting the combined requirements of §§ 742.66 through 742.68, if the form of such certificate shall have been approved for the purpose by the Administrator.

§ 742.70 Copies of certificates to be kept.

Each licensed inspector, each licensed grader, and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cottonseed covered by the certificate is stored.

§ 742.71 Licensees to permit and assist in examination.

Each licensed inspector, each licensed grader, and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 742.41, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector, licensed grader, or licensed weigher under the act and the regulations in this part.

§ 742.72 Reports.

Each licensed inspector, each licensed grader, and each licensed weigher shall, from time to time, when requested by the Administrator, make reports on forms furnished for the purpose by the Service, bearing upon his activities as such licensed inspector, licensed grader, or licensed weigher.

§ 742.73 Licenses; suspension; revocation.

Pending investigation the Secretary may, whenever he deems necessary, suspend the license of a licensed inspector, licensed grader, or licensed weigher temporarily, without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the licensed inspector, licensed grader, or licensed weigher, the Secretary may, without hearing, suspend or cancel the license issued to such licensed inspector, licensed grader, or licensed weigher. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a licensed inspector, licensed grader, or licensed weigher when such licensee, (a) has ceased to perform services as such inspector, grader, or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensed inspector, licensed grader, or licensed weigher. As soon as it shall come to the attention of a licensed warehouseman that either of the conditions mentioned under paragraphs (a) and (b) of this section exist, it shall be the duty of such warehouseman to notify in writing the Administrator. Before the license of any licensed inspector, licensed grader, or licensed weigher is permanently suspended or revoked pursuant to section 12 of the Act, such licensed inspector, licensed grader, or licensed weigher shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 742.84.

[SRA, BAE 102, as amended Sept. 1926, and at 13 FR 8730, Dec. 30, 1948. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.74 Suspended or revoked license; return; termination of license.

(a) In case a license issued to a licensed inspector, licensed grader, or licensed weigher is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed inspector, licensed grader, or licensed weigher to whom it was originally issued, and it shall be posted as prescribed in § 742.64.

(b) Any license issued under the act and the regulations in this part to an inspector, a grader, or a weigher shall automatically terminate as to any licensed warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such inspector, grader, or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses the Secretary shall issue him a new license, omitting the names of the warehouses covering which licenses have been revoked or canceled. Such new license shall be posted as prescribed in § 742.64.

§ 742.75 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a licensed inspector, licensed grader, or licensed weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.

§ 742.76 Unlicensed inspectors, graders, weighers; misrepresentation.

No person shall in any way represent himself to be an inspector, grader, or weigher licensed under the act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the act.

COTTONSEED GRADING

§ 742.77 Classification; statement.

Whenever the grade or condition of cottonseed is required to be or is stated for the purposes of this act and the regulations in this part, it shall be stated in accordance with §§ 742.78 and 742.79.

§ 742.78 Standards to be used.

Until such time as official cottonseed grades of the United States are in effect, the grade and condition of cottonseed shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by any cottonseed organization or by the cottonseed trade generally in the locality in which the warehouse is located, subject to the disapproval of the Administrator, or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Administrator.

§ 742.79 Statement of grade; condition.

Whenever the grade or condition of the cottonseed is stated for the purposes of this act and this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the cottonseed. In case of doubt as to the grade or condition of a given lot of cottonseed a determination shall be made of such facts by drawing at least six samples of five (5) pounds each, fairly representative of the contents of the car, or two samples of two (2) pounds each fairly representative of the contents of the wagon from the various parts of the carload or wagonload of cottonseed offered for storage. These samples shall be thoroughly mixed and after being so mixed, from this mixture by quartering, not less than 100 grams shall be taken, which shall constitute the sample for the purpose of determining the grade.

ARBITRATION

§ 742.80 Arbitration.

(a) Except when agreements have been made in accordance with the "United States Arbitration Act" (43 Stat. 883; 9 U.S.C. 1-14), in case a question arises as to whether the condition, grade, or weight of cottonseed was correctly stated in a receipt, inspection certificate, grade certificate, or weight certificate issued under the act and the regulations in this part or as to whether an official sample was properly drawn by a licensed inspector in accordance with the regulations in this part, the licensed warehouseman concerned or any person financially interested in the cottonseed involved may, after reasonable notice to the other interested party, submit the question to an arbitration committee for determination in accordance with this section.

(b) Such arbitration committee shall be composed of three or more disinterested persons who are competent to pass upon the questions involved. If there be a local trade organization such as a board of trade, chamber of commerce, exchange, or inspection department which provides such a committee under a rule or practice acceptable to the Administrator for the purpose, such a committee may determine the question. In the absence of such a committee, or if for any good reason not inconsistent with the act and the regulations in this part such committee is not acceptable to either of the parties interested the complainant and the other party shall each name a member and the two members so named shall select a third member, who shall constitute the arbitration committee. Each member of any such committee shall at all times be subject, for good cause, to the disapproval of the Administrator, and in case any member is so disapproved he shall not thereafter act on an arbitration committee which is considering any questions relating to the same lot of cottonseed unless such disapproval be withdrawn.

(c) It shall be the duty of the interested parties to acquaint the arbitration committee with the exact nature of the question to be determined and all the necessary facts and to permit the committee to examine the receipt, certificate, sample, or cottonseed involved or any papers or records needed for the determination of the question. The committee shall make a written finding setting forth the question involved, the necessary facts, and its determination. Such findings or a true copy thereof, shall be filed as a part of the records of the licensed warehouseman involved. It may dismiss the matter without determination upon the request of the complainant, or for noncompliance by the complainant with the law or the regulations in this part, or because it is without sufficient evidence to determine the question, in which case the decision shall be deemed to be against the complainant. Except as otherwise provided by law, its decision shall be final for the purposes of the act and the regulations in this part, unless the Administrator shall direct a review of the question. Any necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the committee shall decide that such expense shall be prorated between the parties.

(d) If the decision of the arbitration committee be that the grade, condition, or weight was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it and he shall substitute therefor one conforming to the decision of the committee. If the decision of the committee be that a sample was not properly drawn in accordance with the regulations in this part, it shall cease to be an official sample for the purposes of regulations in this part, and the licensed inspector, at the request of any of the parties of the arbitration, shall draw and substitute a new sample, complying with this part with respect to such sample.

[SRA, BAE 102, as amended Sept. 1926. Redesignated at 50 FR 1814, Jan. 14, 1985]

MISCELLANEOUS

§ 742.81 Bonds required.

Every person applying for a license, or licensed under section 9 of the act shall as such, be subject to all portions of the regulations in this part except § 742.5, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of cottonseed and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 742.12 and 742.13, file with the Secretary a single bond meeting the requirements of the act and the regulations in this part, in such form, and in such amount not less than $5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of cottonseed and its storage in the warehouse in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

§ 742.82 Publications.

Publications under the act and this part shall be made in Service and Regulatory Announcements of the Consumer and Marketing Service, and such other media as the Administrator may from time to time designate for the purpose.

§ 742.83 Information of violations.

Every person licensed under the act shall immediately furnish the Administrator any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 742.84 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130—1.151).

[45 FR 6776, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.85 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

[14 FR 3829, July 13, 1949. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.86 Bond, assets, and fees for combination warehouse.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948. Redesignated at 14 FR 3829, July 13, 1949. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 742.87 Amendments.

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

[SRA, BAE 102; 13 FR 8731, Dec. 30, 1948. Redesignated at 14 FR 3829; July 13, 1949, and at 50 FR 1814, Jan. 14, 1985]

PART 743—FIELD WAREHOUSES

Sec.

743.1 Terms defined.
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743.15 Storage bins; sealing; licensing; operation.
743.16 Signs of tenancy; placing.

AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

SOURCE: SRA, BAE 136; 7 FR 6809, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

§ 743.1 Terms defined.

For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *Commodity regulations.* Rules and regulations made under the act by the Secretary for warehousemen storing certain designated agricultural products.

(b) *Field warehouse.* A warehouse that is operated or is to be operated for the purpose of issuing warehouse receipts representing a disinterested custodianship of the products stored therein and which is leased from any person having a financial interest in the products.

(c) *Field warehouseman.* Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of operating a field warehouse as defined in this section.

(d) *Custodian.* A person appointed or designated by a field warehouseman to supervise or manage a field warehouse licensed under the act.

(e) *Assistant custodian.* A person appointed or designated by a warehouseman to assist the custodian of a field warehouse in the supervision and management thereof.

§ 743.2 Supplementary to commodity regulations.

Nothing in the field warehouse regulations in this part shall be construed to conflict with or to authorize any conflict with, or in any way impair or limit, the effect or operation of the commodity regulations issued by the Secretary for warehousemen storing any specified product or products, but the regulations in this part shall be considered as supplemental to all such commodity regulations and to be effective as to all field warehouses and field warehousemen operating under the act.

§ 743.3 Warehouse licenses; application form.

Applications for licenses to operate field warehouses shall be made in accordance with the commodity regulations for warehousemen storing the particular agricultural product or products stored or to be stored in the field warehouse.

§ 743.4 License; requirements of commodity regulations apply in issuance.

Compliance with all the preliminary requirements of the commodity regulations applicable to the agricultural product or products in question, as well as the regulations in this part, shall be prerequisite to issuing a license to operate a field warehouse.

§ 743.5 Relationship between warehouseman and depositor.

There shall be no close relationship, either by blood or marriage, between the field warehouseman or his custodians and any depositor or the lessor of the field warehouse.

§ 743.6 Custodian; relationship; compensation; qualification.

(a) No employee, either full or part-time, of any depositor, nor any person who is a close blood or other relative of any person occupying a supervisory or directing position in the business or organization of any depositor, or closely interested with any depositor in any business, shall be appointed as a custodian or an assistant custodian by a licensed field warehouseman; nor shall any person be appointed as a custodian or an assistant custodian if he has resigned from the employ of any depositor for the purpose of accepting employment from the warehouseman at the warehouse.

(b) The compensation, or any part thereof, of any custodian, assistant custodians, or any other employee of the warehouseman, if any there be, must be paid by the warehouseman and not by any depositor. The custodian or assistant custodians need not be full-time employees of the warehouseman, but shall not be, under any conditions, part or full-time employees of any depositor of products in the warehouse.

(c) Each person designated by a licensed field warehouseman as a custodian or an assistant custodian shall file with the Service a statement, on a form provided by the Service for the purpose, setting forth his qualifications and experience in warehouse work, the occupation or business he has been engaged in during the five years next preceding the date of the statement, the names of his employers, if any, during such 5-year period, the names of at least five persons who can vouch for his character and qualifications for the position, and such other information as the Secretary, or his designated representative, may require.

(d) No custodian shall accept instructions from anyone other than the warehouseman.

(e) No custodian or assistant custodian shall enter upon his duties as such at a licensed field warehouse until he has been notified in writing by the Service that his appointment has been approved.

§ 743.7 Licensed space; separation; locking.

The warehouse space licensed or to be licensed shall be substantially separated from the other space and shall be kept securely locked or sealed in accordance with § 743.15. All keys to locks shall be kept in the possession of the warehouseman or his authorized agent at all times. In case there is any doubt whether all keys to the warehouse are in possession of the warehouseman or his agents, the warehouseman shall provide new locks and keys for the warehouse.

§ 743.8 Licensed field warehouse; locking; supervision.

It shall be the duty of a licensed field warehouseman to keep the licensed field warehouse securely locked at all times except when the warehouseman, the custodian, or an assistant custodian is present, and no person other than the warehouseman, the custodian, or an assistant custodian shall have access to the licensed warehouse or the products stored therein except in the presence of and with the consent of such warehouseman, custodian, or assistant custodian: *Provided,* That if any night watchman in the employ of the owner of the building is required to enter the licensed warehouse under an insurance requirement and his only duties at the warehouse building are those of a night watchman he may be given a key to the warehouse for that purpose, if the approval of the Service is first secured and the watchman's service is fully provided for in the field warehouse lease agreement: *Provided further,* That the provisions of this section shall not apply in the case of warehouses where the bin system is in effect as outlined in § 743.15. The warehouseman shall at all times exercise absolute and complete control and dominion over the licensed warehouse and the products stored therein to the complete exclusion of all parties except as provided in this section.

§ 743.9 Proper naming of field warehouse.

No misleading name or designation shall be applied to any field warehouse licensed under the act, but in every case the name shall indicate that the warehouse is being operated as a public warehouse by the warehouseman as lessee.

§ 743.10 Filing of rules, schedule of charges; contracts with depositors.

(a) Before a license to conduct a field warehouse is granted under the act, the warehouseman shall file with the Service in accordance with the requirements of the commodity regulations, a copy of his rules and a schedule of charges; and, in addition, he shall file copies of all contracts and agreements entered into by and between him and any depositor or the lessor of the field warehouse which in any way relate to the establishment, operation, management, or payment of expenses connected with the operation of the warehouse. If there are any agreements or understandings between the lessor of the warehouse and the lessee with respect to any of the aforementioned that have not been reduced to writing, the warehouseman shall file with the Service a written statement setting forth the substance of such verbal agreements and understandings.

(b) All warehouses licensed under the act must be operated as public warehouses, and no rules or schedules of charges filed by any warehouseman applying for a license under the act shall be approved by the Secretary, or his designated representative, if it is not clear that the requirements of section 13 of the act can and will be met.

§ 743.11 Receipts; form.

Every receipt, whether negotiable or nonnegotiable, issued for products stored in a field warehouse, shall, in addition to complying with the requirements of section 18 of the act and sections of the applicable commodity regulations, embody within its printed terms a statement that the warehouseman is lessee of the warehouse.

§ 743.12 Receipts; conditions regarding issuance.

Warehouse receipts for products stored in a field warehouse licensed under the act shall be issued in the town or city where the warehouse is located, except that where two or more licensed field warehouses are operated by a warehouseman receipts for all such warehouses may be issued from a central point, provided such central point is not more than 25 miles distant from the farthest warehouse. In cases where receipts are issued from central points the warehouseman shall, when requested by Department representatives, provide transportation for such representatives when engaged in regular inspection work, to and from such warehouses.

§ 743.13 License; conditions regarding issuance.

No field warehouse license shall be issued by the Secretary, or his designated representative, unless the lessee is wholly disinterested with respect to depositors and the application is supported by the original lease and one copy, dated and signed by the contracting parties, and embodying the following: (a) A definite period of time not less than one year after the date of execution, (b) a description of the exact space leased to the field warehouseman and a statement that all of such space is to be covered by the license, if issued, and (c) evidence that said lease has been duly recorded in the county where such warehouse is located, except where there is a statutory inhibition against the recording of such leases, and (d) a clause prohibiting the cancellation of the lease or ejecting the warehouseman so long as any receipt issued under the act and the regulations is outstanding.

§ 743.14 No indemnification against loss account dereliction of warehouseman.

A license to conduct a field warehouse under the act shall not be issued, or if issued, shall not be allowed to remain in effect, if any depositor agrees or has agreed with the warehouseman to indemnify him against loss due to failure of the warehouseman to exercise such care of the products in his custody as a reasonably prudent owner would exercise or as the warehouseman is required to exercise under the act and regulations.

§ 743.15 Storage bins; sealing; licensing; operation.

In the case of warehouses where approved storage bins have been erected and such bins can be sealed with seals furnished by the Department for the purpose, the bins may be licensed and the depositors may, with the consent of the warehouseman, have access to such bins for the purpose of placing goods therein before the seals are affixed and before warehouse receipts are issued by the warehouseman, or for the purpose of removing goods therefrom after the outstanding receipts for all goods in such bin or bins have been surrendered to and canceled by the warehouseman, and the warehouseman or his custodian, or assistant custodian, has broken the seals. Under no circumstances shall anyone other than the licensed warehouseman, the custodian, assistant custodian, or duly appointed employees of the Department of Agriculture in the performance of their official duties, affix any seals to a licensed bin or remove a seal therefrom. Where bins are licensed no receipts may be issued for products stored in any bin until after the seals have been affixed, and no seals may be broken for the purpose of delivering the products until the receipts covering such products have been surrendered and canceled. Seals may be broken to permit inspecting and reasonable sampling of the goods; but such work must be done by the licensed warehouseman, the custodian, or an assistant custodian, and after inspecting or sampling new seals shall be affixed to the bin.

§ 743.16 Signs of tenancy; placing.

(a) Each licensed field warehouseman shall, during the period of his license, maintain suitable signs on the licensed property in such manner as to give ample public notice that such property has been leased by the warehouseman and is controlled and operated by him. Such signs must be of such size and be so affixed to the outside of each licensed building, and at appropriate places within the building, as to attract the attention of and give notice to the public as to the real tenancy, and must be placed at each point of entry to and exit from the licensed space.

(b) Such signs shall include the following: (1) The name and address of the license, (2) the name of the warehouse, (3) the license number of the warehouse, (4) a statement that the warehouseman is lessee, and (5) the words "public warehouse."

(c) Such other wording or lettering as is not inconsistent with the purpose of the act and the regulations in this part and is approved by the Service may appear in the sign or signs.

(d) The warehouseman shall not permit signs to remain on his licensed property which might lead to confusion as to the tenancy.

SUBCHAPTER D—SPECIAL PROGRAMS

PART 750—SOIL BANK

EDITORIAL NOTE: Part 750, published at 21 FR 6289, Aug. 22, 1956, and redesignated at 26 FR 5788, June 29, 1961, is no longer carried in the Code of Federal Regulations. This deletion does not relieve any person of any obligation or liability incurred under these regulations, nor deprive any person of any rights received or accrued under the provisions of this part. For FEDERAL REGISTER citations affecting this part, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

PART 752—WATER BANK PROGRAM

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AUTHORITY: Secs. 2-12, 84 Stat. 1468-1471, as amended (16 U.S.C. 1301-1311).

SOURCE: 48 FR 45528, Oct. 6, 1983 (interim rule), and 50 FR 7744, Feb. 26, 1985 (final rule), unless otherwise noted.

§ 752.1 Program objective.

(a) The regulations in this part set forth the terms and conditions for the Water Bank Program. The Secretary is authorized to enter into agreements and make payments to eligible persons in important migratory waterfowl nesting and breeding areas. Specified wetlands identified for the conservation of water or related uses on a conservation plan shall be developed in cooperation with the Soil and Water Conservation District in which the lands are located.

(b) The objective of the Water Bank Program (hereinafter referred to in this part as the "program") is to preserve, restore, and improve the wetlands of the Nation, and thereby: (1) Conserve surface waters, (2) preserve and improve habitat for migratory waterfowl and other wildlife resources, (3) reduce runoff, soil and wind erosion, (4) contribute to flood control, (5) contribute to improved water quality and reduce stream sedimentation, (6) contribute to improved subsurface moisture, (7) reduce acres of new land coming into production and to retire lands now in agricultural production, (8) enhance the natural beauty of the landscape, and (9) promote comprehensive and total water management planning.

§ 752.2 Definitions.

(a) "Adjacent land" means land on a farm which adjoins designated types 1 through 7 wetlands and is considered essential for the protection of the wetland or for the nesting, breeding, or feeding of migratory waterfowl. Adjacent land need not be contiguous to the land designated as wetland, but cannot be located more than one quarter of a mile away. Types 1 and 2 wetlands may be designated as adjacent land rather than wetland if located not more than one quarter mile from types 3 through 7 wetlands.

(b) "Administrator" means the Administrator or Acting Administrator of the Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture.

(c) "Agreement" means a water bank agreement.

(d) "Conservation plan" means a written record of the land user's decisions on the use and management of the wetland and adjacent areas covered by the agreement. The conservation plan is the basis for the agreement. It includes a schedule of conservation treatment and management required to improve, protect, or restore the wetland and to maintain the wetland and adjacent land as a functional wetland unit for the life of the agreement. Conservation treatment and management of the vegetation for wetland protection, wildlife habitat, or other authorized objectives are consistent with the program objectives and priorities.

(e) "Wetlands" means the inland fresh areas described as types 1 through 7 in Circular 39, Wetlands of the United States, as published by the United States Department of the Interior.

(f) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operation shall, unless the context of subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, Part 719 of this chapter, as amended.

[48 FR 45528, Oct. 6, 1983, as amended at 50 FR 7744, Feb. 26, 1985]

§ 752.3 Administration.

(a) The program will be administered under the general supervision of the Administrator, in consultation with the Secretary of the Interior or his designee, and shall be carried out in the field by ASCS State and county committees.

(b) Members of county committees are authorized to approve water bank agreements on behalf of the Secretary of Agriculture.

(c) State and county committees do not have authority to modify or waive any of the provisions of these regulations, or any amendment, supplement, or revision thereto. They do not have authority to modify or waive any of the provisions of any agreement entered into hereunder except to the extent specifically authorized in this part.

[48 FR 45528, Oct. 6, 1983, as amended at 50 FR 7744, Feb. 26, 1985]

§ 752.4 Geographical applicability.

The program will be applicable in States and counties designated by the Deputy Administrator, State and County Operations, ASCS (hereinafter referred to as the "Deputy Administrator") after consultation with the United States Fish and Wildlife Service, United States Department of the Interior.

§ 752.5 Eligible farm.

A farm is eligible for participation in the program if: (a) At the time the request for an agreement is filed, land on the farm is not covered by a Water Bank Program agreement; (b) the farm contains at least one of the types 3 through 7 wetlands which are identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the farm is located; and (c) the farm meets the other requirements specified in this part.

§ 752.6 Land eligible for designation.

(a) Land placed under an agreement shall be specifically identified and designated for the period of the agreement.

(b) Land eligible for designation must be: (1) Privately owned inland fresh wetland areas of types 1 through 7 of which at least 2 acres must be types 3 through 7 wetlands with respect to which, in the absence of inclusion in the program, destruction of the wetland character could reasonably be expected; (2) privately owned inland fresh wetland areas of types 1 through 7, which are under a drainage easement with the U.S. Department of the Interior or with a State government which permits agricultural use; or (3) other privately owned land which is adjacent to or within one quarter mile of designated types 1 through 7 wetlands and which is determined by the county committee to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

(c) The following land is not eligible for designation: (1) Land on which the ownership has changed during the 2-year period preceding the first year of the agreement period unless: (i) The new ownership was acquired by will or succession as a result of the death of the previous owner, or (ii) the land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain. However a new owner shall not be prohibited from entering into an agreement if the person has operated the land to be designated for as long as 2 years preceding the first year of the agreement and has control of such land for the agreement period. The provisions of this subparagraph shall not prohibit the continuation of an agreement by a new owner after an agreement has once been entered into under this part.

(2) Land which is set aside or diverted under any other program administered by the Department of Agriculture.

(3) Land which is owned by the United States or a State or local government or political subdivision thereof.

(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with § 752.7(g).

(5) Types 1 through 7 wetlands which are common to more than one farm unless the portion of a wetland area located on the farm which controls the potential outlet for drainage is placed under agreement. After an agreement has been approved for the farm controlling the outlet for drainage, an agreement may be entered into with any or all other farms for other portions of the common wetland area if all agreements have the same beginning date as the farm controlling the outlet for drainage.

[48 FR 45528, Oct. 6, 1983, as amended at 50 FR 7744, Feb. 26, 1985]

§ 752.7 Use of designated acreage.

(a) The acreage designated under an agreement shall be maintained for the agreement period in a manner which will preserve, restore or improve the wetland character of the land. Persons entering into an agreement shall devote the adjacent land to conservation uses as specified in the agreement.

(b) The designated acreage shall not be drained, burned, filled, or otherwise used in a manner which would destroy the wetland character of the acreage, except that the provisions of this paragraph shall not prohibit the carrying out of management practices which are specified in a conservation plan for the farm which is developed in cooperation with the Soil and Water Conservation District in which the farm is located.

(c) The designated acreage shall not be used as a dumping area for draining other wetlands. However, the county committee may authorize the use of the designated area to receive limited drainage waters upon a determination that such use is consistent with the sound management of wetlands and is specified in the conservation plan for the farm.

(d) The designated acreage shall not be used: (1) As a source of irrigation water or as acreage for a set-aside, land diversion, acreage reduction or other program, or (2) to meet the conserving base acreage requirement for any other program.

(e) No crop shall be harvested from the designated acreage and such acreage shall not be grazed, except as may be specified in the conservation plan for the farm except that the designated acreage may be grazed in the first year of the agreement period prior to the date the agreement is approved.

(f) During periods of severe drought, haying of the designated acreage may be approved under specified conditions which are prescribed by the Deputy Administrator in consultation with the Secretary of Interior or his designee.

(g) The harvesting of timber products may be permitted but only in accordance with a Forest Management Plan which is included in the conservation plan and which is approved by the State forester or equivalent State official.

[48 FR 45528, Oct. 6, 1983, as amended at 50 FR 7744, Feb. 26, 1985]

§ 752.8 Water bank program agreement.

(a) An agreement shall be executed for each participating farm. The agreement shall be signed by the owner of the designated acreage and any other person who, as landlord, tenant, or share cropper, will share in the payment or has an interest in the designated acreage.

(b) There may be more than one agreement for a farm.

(c) Each agreement shall be signed by a member of the county committee on behalf of the Secretary.

[48 FR 45528, Oct. 6, 1983, as amended at 50 FR 7744, Feb. 26, 1985]

§ 752.9 Agreement period.

(a) The agreement period shall be 10 years. The agreement shall become effective on January 1 of the year in which the agreement is approved except that the agreement shall become effective on January 1 of the next succeeding year in cases where, at the time the agreement is approved, the county committee determines that the agreement signers will be unable to comply with the provisions of § 752.7 relating to the use of designated acreage in the year in which such agreement is approved.

(b) Subject to a modification of payment rates and such other provisions which may be determined to be desirable, agreements may be renewed for additional periods of 10 years each.

§ 752.10 Awarding water bank agreements.

(a) Persons wishing to be considered for an agreement shall file a request with the county committee indicating the acreage which is to be designated under the agreement. In order to be eligible for participation in the program, such persons must agree to designate: (1) 2 or more acres of types 3 through 7 wetlands, and (2) a total of at least 10 acres consisting of types 1 through 7 wetlands or adjacent land, or any combination thereof, identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the farm is located. In addition, the Soil Conservation Service (SCS) must certify that the designated acreage constitutes a viable wetland unit, contains sufficient adjacent land to protect the wetland, and provides essential habitat for the nesting, breeding or feeding of migratory waterfowl. An acreage of less than 10 acres may be designated if the SCS representative recommends acceptance of the acreage and certifies that the area offered for agreement is a good, viable wetland unit and that the acceptance of the acreage would be in accord with the purposes of the program.

(b) Persons desiring to participate in the program may agree to designate any additional amount to types 1 through 7 wetlands and adjacent land. However, the maximum acreage of adjacent land which is designated under the agreement with respect to which payment shall be based cannot exceed four times the total acreage of types 3 through 7 wetlands which is designated under the agreement. This maximum acreage restriction may be waived by the State committee if such waiver would further the program objectives.

(c) Where funds allocated to the county do not permit accepting all requests which are filed, the county committee may limit the approval of requests for agreements in accordance with instructions issued by the Deputy Administrator.

§ 752.11 Responsibility of agreement signers.

(a) The owner of the designated acreage is responsible for compliance with the agreement and for any refunds or deductions for failure to comply fully with the terms of the agreement while a party to such agreement.

(b) Each other person signing the agreement is jointly and severally responsible with the owner for compliance with the agreement and for any refunds or payment reductions which may be required for failure to comply fully with the terms of the agreement while a party to such agreement.

§ 752.12 Provisions relating to tenants and sharecroppers.

(a) No agreement shall be approved if it appears that the owner, landlord, or operator has (1) not afforded the tenants and sharecroppers having an interest in the designated acreage an opportunity to participate in the program, or (2) adopted any device of scheme for the purpose of depriving any tenant or sharecropper of their payment or any other right under the program.

(b) The agreement shall be deemed to be in noncompliance if any of the conditions set forth in paragraph (a) of this section occur after the approval of the agreement.

§ 752.13 Determination of compliance.

(a) Determination of the acreage designated under the agreement shall be made in accordance with Part 718 of this chapter, as amended.

(b) A representative of the county or State committee or any authorized representative of the Secretary shall have the right at any reasonable time to enter a farm concerning which representations have been made on any forms filed under the program in order to measure the designated acreage, to examine any records pertaining thereto, and to otherwise determine the accuracy of any representations and the performance of any obligations by the signatories of a WBP agreement.

§ 752.14 Annual payments.

(a) Persons on the farm having an interest in the designated acreage shall be eligible for an annual payment.

(b) The annual per acre payment rates for wetlands and for adjacent land shall be those rates which are recommended by the county and State committee and approved for each county by the Deputy Administrator. If the wetlands are subject to a drainage easement with the United States Department of the Interior or a state governmental entity, the payment rates for such wetlands will be 80 percent of the approved county rates which are applicable to wetlands in the county. A listing of all approved rates shall be available for inspection at the county ASCS office.

(c) The payment shall be divided among the owner of the designated acreage and any other person having an interest in such acreage, including tenants and sharecroppers, in the manner agreed upon by them as representing their respective contributions to compliance with the agreement. The county committee shall refuse to approve an agreement if it determines that the proposed division of payment is not fair and equitable. The annual payment and the division of the payment shall be specified in the agreement.

§ 752.15 Adjustment of annual rates.

(a) The county committee shall reexamine the payment rates with respect to each agreement at the beginning of the fifth year of any ten-year initial or renewal period and before the renewal period expires.

(b) An adjustment in the payment rates shall be made for any initial or renewal period taking into consideration the current land rental rates and crop values in the area. No adjustment shall be made in a payment rate which will result in a reduction of an annual payment rate from the rate which is specified in the initial agreement.

§ 752.16 Refunds or forfeitures for noncompliance.

(a) Except as otherwise provided in paragraph (b) of this section, no payment shall be made to any person for any year with respect to any agreement for which it is determined that for such year:

(1) There has been a failure to maintain the wetland character of the designated acreage and devote the adjacent land to the use specified in the agreement as provided in § 752.7. (a);

(2) There has been a failure to comply with the prohibition against draining, burning, filling, or otherwise using the designated acreage in a manner which would destroy the wetland character of the acreage as provided in § 752.7 (b);

(3) There has been a failure to comply with the prohibition against using the designated acreage as a

dumping area for draining other wetlands as provided in § 752.7 (c);

(4) There has been a failure to comply with the prohibition against using the designated acreage as a source of irrigation water or as acreage for a set-aside, land diversion, acreage reduction or other program, or to meet the conserving base acreage requirement for any other program as provided in § 752.7 (d);

(5) There has been a failure to comply with the prohibition against harvesting a crop from or grazing the designated acreage as provided in § 752.7(e);

(6) There has been a failure to comply with the provisions relating to haying the designated acreage during periods of severe drought as provided in § 752.7(f);

(7) There has been a failure to comply with the provisions relating to the harvesting of timber products as provided in § 752.7(g); or

(8) There has been a failure to comply with the provisions relating to tenants and sharecroppers as provided in § 752.12.

(b) The regulations govering the making of payments when there has been a failure to comply fully with the provisions of the program, Part 791 of this chapter, are applicable to the WBP.

(c) The agreement shall be terminated in any case in which the failure to comply with the provisions of this part requires a refund or forfeiture of the entire annual payment under the agreement for the year and it is determined that the failure to comply is of such a nature as to warrant termination of the agreement. If an agreement is terminated, the persons signing the agreement shall forfeit all rights to further payments under the agreement and shall refund all payments received under the agreement.

§ 752.17 Actions defeating purposes of program.

If the county committee with the concurrence of the State committee, or the State committee, finds that any person has taken any action which tends to defeat the purposes of the program, all or any part of the annual payment which otherwise would be due under the program may be withheld or be required to be refunded.

§ 752.18 Filing of false claims.

The making of a fraudulent representation by a person in the payment documents or otherwise for the purpose of obtaining a payment from the county committee shall render the person liable, in addition to any liability under applicable Federal criminal and civil fraud statutes, for a refund of any payments received by such person as the result of the fraudulent representation.

§ 752.19 Depriving others of payments.

If the State committee finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation) which deprives any other person of a payment to which such person is otherwise entitled under the program, the State committee may withhold or require a refund of all or any part of the program payment which otherwise would be due to the person who employed such scheme or device.

§ 752.20 Modification of an agreement.

(a) Any reconstitution of farms shall be made in accordance with the regulations governing reconstitution of farms, Part 719 of this chapter, as amended.

(b) If the farm is reconstituted because of purchase, sale, change of operation, or otherwise, the agreement shall be modified in accordance with instructions issued by the Deputy Administrator with respect to any reconstituted farm which contains all or any part of the original designated acreage. The modified agreement or agreements shall reflect the changes in the number of acres in any reconstituted farm, the designated acreage, interested persons, and division of payments. If persons who were not signatories to the original agreement are required to execute such modified agreement or agreements in accordance with the provisions of § 752.8, but such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated with respect to the designated acreage which is not continued in the program, and all unearned payments shall be forfeited or refunded to ASCS. The annual payment for the year in which a reconstitution occurs shall not be considered earned unless the designated acreage is continued in the program and there is a compliance with the agreement for the full agreement year. The persons on the farm prior to the reconstitution who were signatories to the agreement shall be jointly and severally responsible for refunding the unearned payments previously made.

(c) Except with respect to a farm which is reconstituted, if the ownership or operation of the farm changes in such a manner that the agreement no longer contains the signatures of persons required to sign the agreement in accordance with § 752.8, the agreement shall be modified in accordance with instructions issued by the Deputy Administrator to reflect the new interested persons and new divisions of payments. If such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated and all unearned payments shall be forfeited or refunded. The annual payment for the year in which the change of ownership or operation occurs shall not be considered to have been earned unless the designated acreage is continued in the program and there is compliance with the agreement for the full agreement year. The persons on the farm prior to the change of ownership or operation who were signatories to the agreement shall be jointly and severally responsible for refunding the unearned payments previously made.

(d) The Deputy Administrator may authorize other agreement modifications which are determined to be desirable to carry out the purposes of the program or to facilitate its administration.

§ 752.21 Termination of agreements.

The Deputy Administrator may, by mutual agreement with the parties to the agreement, consent to the termination of an agreement where: (a) The operator of the farm is physically handicapped and could not reasonably be expected to comply with the terms and conditions of the agreement; (b) the operator is or was mentally unstable at the time of the signing of the agreement and could not reasonably be expected to comply with the terms and conditions of the agreement; (c) the parties to the agreement are unable to comply with the terms of the agreement as the result of conditions beyond their control; (d) compliance with the terms of the agreement would work a severe hardship on the parties to the agreement; or (e) termination of the agreement would be in the public interest. If an agreement is terminated in accordance with the provisions of this section, the annual payment for the year in which the agreement is terminated shall not be considered to have been earned unless there is compliance with the terms and conditions of the agreement for the entire calendar year.

§ 752.22 Transfer of interest in an agreement.

(a) If a person acquires an interest in the designated acreage during the period covered by an agreement, such person may, with the consent of the other parties to the agreement and with approval of the county committee, become a party to the agreement and share in payments thereunder. A person, by becoming a party to the agreement, shall be jointly and severally responsible with the other signatories to the agreement for compliance with the terms and conditions of the agreement. In addition, such person shall be liable for any payment reductions or refunds which may be required as the result of the failure to comply with the terms and conditions of such agreement after becoming a party to the agreement.

(b) If a signatory to an agreement ceases to have an interest in the designated acreage, such person thereby ceases to be a party to the agreement. However, such person will not be relieved of any liability for deductions and refunds for failure to comply with the terms and conditions of the agreement while a party to the agreement.

§ 752.23 Successors-in-interest.

In case of death, incompetency, or disappearance of any person, any payment due shall be paid to the successor as determined in accordance with provisions of the regulations in Part 707 of this chapter, as amended.

§ 752.24 Agreement not in comformity with regulations.

If, after an agreement is approved by the county committee, it is discovered that such agreement is not in conformity with the regulations as the result of a misunderstanding of the program procedures by a signatory to the agreement, a modification of the agreement may be made by mutual agreement. If persons who are currently eligible to execute the corrected agreement are unwilling to do so, the agreement shall be terminated and all payments paid or payable under the agreement shall be forfeited or refunded, except as may be allowed by the Deputy Administrator in accordance with the provisions of § 752.25.

§ 752.25 Performance based upon advice or action of county or State committee.

The provisions of Part 790 of this chapter, as amended, relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this program.

§ 752.26 Setoffs and withholdings.

The regulations issued by the Secretary governing setoffs and withholdings, Part 13 of this title, as amended, shall be applicable to this program.

§ 752.27 Debt collection.

Any debts arising under this program are governed with respect to their collection by the Federal Claims Collection Act of 1966 (31 U.S.C. 3701) and the regulations found at Chapter II of 4 CFR.

§ 752.28 Appeals.

Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with Part 780 of this chapter, as amended.

§ 752.29 Payments not subject to claims.

Any payments due any person shall be determined and allowed without regard to State law and without regard to any claim or lien against any crop, or proceeds thereof, which may be asserted by any creditor, except as provided in § 752.26.

§ 752.30 Prohibition against payments.

The regulations in Part 796 of this chapter prohibiting the making of payments to program participants who harvest or knowingly permit to be harvested for illegal use marijuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by them are applicable to this program.

§ 752.31 Delegation of authority.

No delegation herein to a State or county committee shall preclude the Administrator, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 752.32 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these Regulations (§§ 752.8, 752.10 and 752.13) under the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0062 has been assigned.

PART 755—REGIONAL PROGRAMS

Subpart—Appalachian Land Stabilization and Conservation Program

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AUTHORITY: Sec. 208, 79 Stat. 5, 12; 40 U.S.C. App. 1, 2, 203.

SOURCE: 30 FR 8669, July 9, 1965, unless otherwise noted.

Subpart—Appalachian Land Stabilization and Conservation Program

§ 755.1 Definitions.

As used in this subpart the following terms shall have the following meanings:

(a) "Act" means the Appalachian Regional Development Act of 1965.

(b) "Appalachian Region" or "the Region" means that area of the Eastern United States consisting of the following counties (including any political subdivision located within such area):

In Alabama, the counties of Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, De Kalb, Elmore, Etowah, Fayette, Franklin, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, Pickens, Randolph, Saint Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston;

In Georgia, the counties of Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Dade, Dawson, Douglas, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Heard, Jackson, Lumpkin, Madison, Murray, Paulding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield;

In Kentucky, the counties of Adair, Bath, Bell, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Green, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Menifee, Monroe, Montgomery, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe;

In Maryland, the counties of Allegany, Garrett, and Washington;

In Mississippi, the counties of Alcorn, Benton, Chickasaw, Choctaw, Clay, Itawamba, Kemper, Lee, Lowndes, Marshall, Monroe, Noxubee, Oktibbeha, Pontotoc, Prentiss, Tippah, Tishomingo, Union, Webster, and Winston;

In New York, the counties of Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Delaware, Otsego, Schoharie, Schuyler, Steuben, Tioga, and Tompkins;

In North Carolina, the counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Davie, Forsyth, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey;

In Ohio, the counties of Adams, Athens, Belmont, Brown, Carroll, Clermont, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Tuscarawas, Vinton, and Washington;

In Pennsylvania, the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lawrence, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, and Wyoming;

In South Carolina, the counties of Anderson, Cherokee, Greenville, Oconee, Pickens, and Spartanburg;

In Tennessee, the counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Claiborne, Clay, Cocke, Coffee, Cumberland, DeKalb, Fentress, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, McMinn, Macon, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Smith, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White;

In Virginia, the counties of Alleghany, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Highland, Lee, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe;

All the counties of West Virginia.

(c) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) "Administrator" means the Administrator or Acting Administrator of the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(e) "Deputy Administrator" means the Deputy Administrator or Acting Deputy Administrator for State and County Operations, Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(f) "Director" means the Director or Acting Director of the Farmer Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(g) "State" means any one of the States in the Appalachian Region.

(h) "State committee" means the persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State Committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(i) "County" means a political subdivision of a State identified as a county.

(j) "County committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(k) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(l) "Occupier" means any person other than the owner or operator who has an interest as tenant or sharecropper in the acreage covered by the contract.

(m) "Farm" means that area of land defined as a farm under the regulations governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this chapter, as amended, or, for purposes of contracts entered into pursuant to § 755.20, the land covered by the contract.

(n) "Cropland" means that land considered as cropland under the regulations governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this chapter, as amended.

(o) "Contract" means a Cost-Share Contract, Appalachian Land Stabilization and Conservation Program.

(p) "Commission" means the Appalachian Regional Commission which is composed of one Federal member (Federal Cochairman) and one member from each participating State in the Appalachian region.

(q) "Federal Cochairman" means the Federal Cochairman of the Appalachian Regional Commission.

(r) "State Cochairman" means the State Cochairman of the Appalachian Regional Commission as elected by the State members of the Commission from among their number.

[30 FR 8669, July 9, 1965, as amended by Amdt. 2, 30 FR 14099, Nov. 9, 1965; Amdt. 4, 33 FR 16141, Nov. 5, 1968; Amdt. 5, 35 FR 8442, May 29, 1970]

§ 755.2 Purposes and objectives.

The general purposes and objectives of the Appalachian Land Stabilization and Conservation Program are to promote economic growth of the Region and to promote the conservation and development of the Region's soil and water resources. This program is a long-term program designed to carry out the policy of the Act by assisting landowners, operators, or occupiers through contracts providing for land stabilization, erosion and sediment control, reclamation through changes in land use, and the establishment of practices and measures for the conservation and development of the Region's soil, water, woodland, wildlife, and recreation resources.

§ 755.3 Geographical applicability.

The Appalachian Land Stabilization and Conservation Program will be limited to the States and counties designated as part of the Appalachian Region as defined in § 755.1 of the regulations of this part, and then only in counties or areas specifically approved in the State program developed hereunder.

§ 755.4 General.

(a) The Appalachian Land Stabilization and Conservation Program will be administered in the field by State and county committees under the general direction and supervision of the Administrator. Members of county committees are hereby authorized to sign contracts on behalf of the Secretary. State and county committees do not have authority to modify or waive any of the provisions of these regulations, or any amendment, supplement, or revision thereto.

(b) Landowners, operators, and occupiers desiring to share in the accomplishment of the purposes and objectives of the program will be given an opportunity to participate in the program in accordance with the provisions of the program as set forth in this subpart. An applicant, as a part of his application for assistance, will file an acceptable conservation and development plan for the acreage to be included in his contract, and the measures specified in the plan must be carried out irrespective of whether cost-sharing is offered. The county committee will determine the practices and extent of such practices to be approved for cost-sharing to assist the applicant in carrying out his acceptable plan. A contract shall be entered into setting forth the extent of the approved assistance. An acceptable conservation and development plan will be a plan developed for the land proposed to be placed under contract, on a form prescribed by the Administrator, with technical planning assistance by technicians of the Soil Conservation Service, except in cases where the proposed treatment involves only a single practice of pasture renovation or timber stand improvement or conversion of less than 10 acres of land to grass or trees and such use does not involve critical areas or unusual costs and the conservation and development plan is acceptable to the county committee. In approving contracts, the county committees shall give preference to needy landowners, operators, and occupiers to the extent that such preference is consistent with the development of land treatment programs in the project area.

(c) Detailed information concerning the program as it applies to an individual farm may be obtained from the county ASCS office for the county in which the farm is located or from the State ASCS office.

[30 FR 8669, July 9, 1965, as amended by Amdt. 4, 33 FR 16141, Nov. 5, 1968]

§ 755.5 State programs.

(a) The State program shall be developed by the State or a political subdivision thereof in accordance with the regulations contained in this subpart. The Agricultural Stabilization and Conservation Service and other applicable agencies of the Department of Agriculture shall cooperate with the State governmental officials in the development of the program. The chairman of the State committee as the chairman of the State Agricultural Conservation Program Development Group shall be the point of contact with the State governmental officials. The State Agricultural Conservation Program Development Group, which consists of the State ASC Committee (including the State Director of Extension), the State conservationist of the Soil Conservation Service, and the Forest Service official having jurisdiction over farm forestry in the State, shall consult with organizations and agencies within the State that have conservation interests and responsibilities. Upon request of the Governor of the State, a person selected as a direct representative of the Governor may be designated by the Secretary as an additional member of the ACP Development Group with equal authority with other members of the Group in the development of the State program.

(b) The State program shall include the following provisions: (1) Identification of program objectives and areas in the State where the program will be applicable; (2) the designation of practices for which cost-share assistance is requested for each designated area, including specifications for each proposed practice; and (3) the proposed cost-share rates for each practice.

(c) Minimum specifications which practices must meet to be eligible for Federal cost-sharing shall be set forth in the State program, or be incorporated therein by specific reference to a standard publication or other written document containing such specifications. For practices involving the establishment or improvement of vegetative cover, the specifications shall include, where appropriate, liming fertilization, and seeding rates, eligible seeds and mixtures, seeding dates, requirements for cultural operations and inoculation, and other steps essential to the successful establishment or improvement of the vegetative cover. For mechanical or construction type practices, the specifications shall include, where appropriate, the types and sizes of material, installation or construction requirements, and other steps essential to the proper functioning of the structure. For other practices, the specifications shall include those steps essential to the successful performance of the practice. Practice specifications may provide minimum performance requirements which will qualify the practice for cost-sharing and maximum limits of performance which will be eligible for cost-sharing. For practices which authorize Federal cost-sharing for applications of liming materials and commercial fertilizers, the minimum applications and maximum applications on which cost-sharing is authorized shall be determined on the basis of a current soil test: *Provided, however,* That if available facilities are not adequate to permit the desired use of soil tests under the program, an alternative basis for determination by the county committee of such application shall be authorized to the extent necessary.

(d) The following practices and uses are authorized:

(1) Establishment of permanent sod waterways to dispose of excess water without causing erosion.

(2) Establishment of a permanent vegetative cover for soil protection or as a needed land use adjustment.

(3) Constructing terraces to detain or control the flow of water and check soil erosion.

(4) Constructing diversion terraces, ditches, or dikes to intercept runoff and divert excess water to protected outlets.

(5) Constructing erosion control, detention, or sediment retention dams, pits, or ponds to prevent or heal gullying or to retard or reduce runoff of water.

(6) Constructing channel lining, chutes, drop spillways, pipe drops, drop inlets, or similar structures for the protection of outlets and water channels that dispose of excess water.

(7) Streambank or shore protection, channel clearance, enlargement or realinement, or construction of floodways, levees, or dikes, to prevent erosion or flood damage to farmland.

(8) Establishment of a stand of trees or shrubs to prevent erosion.

(9) Establishment of a stand of forest trees or shrubs on farmland for purposes other than the prevention of erosion.

(10) Improvement of a stand of forest trees.

(11) Establishment of contour stripcropping to protect soil from erosion.

(12) Constructing or sealing dams, pits, or ponds as a means of protecting vegetative cover or to make practicable the utilization of the land for vegetative cover.

(13) Developing springs or seeps for livestock water as a means of protecting vegetative cover or to make practicable the utilization of the land for vegetative cover.

(14) Controlling competitive shrubs to permit growth of adequate desirable vegetative cover.

(15) Improvement of an established vegetative cover for soil or watershed protection.

(16) Treatment of farmland to permit the use of legumes and grasses for soil improvement and protection.

(17) Construction of water facilities for wildlife habitat or protection.

(18) Establishment of vegetative cover to provide habitat, food, or shelter for wildlife.

(19) Conservation practices to develop recreation resources—establishment of picnic and sports area; establishment of camping and nature recreation areas; establishment of hunting and shooting preserve area; establishment of fishing area; establishment of summer water sports area; establishment of winter sports area.

(20) Other practices not covered above which are determined to be needed to accomplish the purpose of the program.

(e) The Soil Conservation Service shall have the same technical responsibility for Appalachian Land Stabilization and Conservation Program practices as it has for the same or similar Agricultural Conservation Program Practices including applicable components of approved recreation practices. The Forest Service is responsible for the technical phases of forestry practices.

(f) Each proposed State program shall be submitted to the Commission by the member thereof representing such State. The estimated amount of funds needed to accomplish the objectives of such program shall be stated in the submission of the proposed program to the Commission. If approved by the Commission, the proposed State program shall be submitted to the Secretary by the Federal Cochairman. Responsibility is assigned to the Farmer Programs Division, ASCS for review and recommendation for approval or disapproval by the Secretary.

(g) Copies of bulletins setting forth the State program as approved by the Secretary shall be available in the office of the county committee.

[30 FR 8669, July 9, 1965, as amended by Amdt. 2, 30 FR 14099, Nov. 9, 1965]

§ 755.6 Cost-share contract.

(a) *Filing requests.* (1) Landowners, operators, or occupiers in eligible counties shall be furnished information with respect to the program and afforded an opportunity to request a cost-share contract covering those practices which would accomplish the objectives of the program on the farm.

(2) The request shall be on a form and in accordance with instructions prescribed by the Administrator.

(b) *Entering into a contract.* (1) The county committee is authorized to approve the contract on behalf of the Secretary.

(2) The contract must be signed by the owner of the land on which cost-share payments are provided under the contract and by the operator of the farm. The contract shall also be signed by any occupiers who will share in payments in one or more years of the contract period.

(3) There shall be only one contract for a farm.

(4) The final date for signing the contract shall be the date announced by the Administrator.

(c) *Contract period.* (1) The period to be covered by a contract shall be not less than 3 years or longer than 10 years as agreed to by the contract signers and the county committee.

(2) The first year of the contract period shall begin on the date of the approval of the contract and shall end on December 31 of such year. Each subsequent year of the contract period shall be on a calendar year basis.

§ 755.7 Cost-share payments.

(a) Subject to the conditions and limitations in this subpart, cost-sharing may be authorized for practices needed during the period of the contract to conserve and develop soil, water, woodland, wildlife, and recreation resources. Payment of the cost-shares shall be made only upon application submitted on a form prescribed by the Administrator. Practices required to be established under the contract which are started after a request for a contract is filed shall be considered as started during the contract period.

(b) Cost-share rates shall not exceed 80 per centum of the average cost of carrying out the land treatment measures or such lower rate as the county committee determines will accomplish the objectives of the program. As a further limitation, cost-sharing may not be authorized in excess of a total amount computed by multiplying the number of acres designated under contract times $50, unless a representative of the State committee approves an amount in excess of this limitation on the basis that the income potential and benefits derived from expenditures of the additional money warrant the higher limit.

(c) Cost-sharing shall not be approved for more than 50 acres per farm.

(d) The total acreage with respect to which any landowner, operator, or occupier receives cost-sharing payments shall not exceed 50 acres under all contracts in which he has an interest.

(e) Cost-sharing for the practices or components thereof contained in the approved State program is conditioned upon the establishment, maintenance, and performance of the practices in accordance with all applicable specifications and program provisions. The county committee shall specify on the practice approval the date by which the practice must be completed. Subject to the availability of funds, cost-sharing may be authorized for the restoration or replacement of any needed conservation measure if during the contract period the original conservation use is destroyed or rendered unsuitable through no fault of the contract signers.

(f) In addition to the provisions contained in this subpart, cost-sharing payments shall also be subject to the following regulations of the Agricultural Conservation Program (7 CFR 701.1-701.93, as amended): Section 701.24 *Failure to meet minimum requirements*, § 701.25 *Conservation materials and services*, § 701.26 *Practices carried out with aid for ineligible persons*, § 701.27 *Division of Federal cost-share*, § 701.33 *Compliance with regulatory measures*, § 701.36 *Depriving others of Federal cost-sharing*, § 701.38 *Misuse of purchase orders*, § 701.39 *Federal cost-shares not subject to claims*, and § 701.40 *Assignments*. The Agricultural Conservation Program regulations referred to above shall mean the Agricultural Conservation Program regulations applicable to the year in which the contract is approved.

(g) Cost-share payments shall not be made under the program with respect to land owned by the Federal Government, a State, or a political subdivision thereof.

[30 FR 8669, July 9, 1965, as amended by Amdt. 1, 30 FR 9758, Aug. 5, 1965; Amdt. 4, 33 FR 16141, Nov. 5, 1968]

§ 755.8 Modification of contract.

(a) If the farm is reconstituted in accordance with the regulations governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this chapter, as amended, or if there is any change in the land covered by a contract entered into pursuant to § 755.20, because of purchase, sale, change of operation, or otherwise, the contract shall be modified. Such modified contract or contracts shall reflect the changes in the number of acres in any resulting farm, the acreage covered by the contract, interested persons, and practices called for under the original contract. If persons who were not signatories to the original contract are eligible and required to sign such modified contract or contracts but are not willing to become parties to the modified contract or for any other reason a modified contract is not entered into, cost-share payments for practices which have not been carried out shall be forfeited with respect to acreage not continued in the program. In addition, with respect to acreage not continued in the program, cost-share payments paid for practices (or components thereof) which have been carried out shall be refunded by the owner of such acreage prior to reconstitution unless the county committee with the approval of the State committee determines that the failure to carry out all of the practices called for by the original contract will not impair the practices which have been carried out and the completed practices will provide conservation benefits consistent with the cost-shares which have been paid. Notwithstanding the foregoing, if control of land was lost through eminent domain proceedings or to an agency having the right of eminent domain, any cost-share payments paid under the contract with respect to such land are not required to be refunded.

(b) Except in cases covered by paragraph (a) of this section, if the ownership or operation of the farm or the land covered by the contract changes in such a manner that the contract no longer contains the signatures of persons required to sign the contract as provided in § 755.6, the contract shall be modified to reflect the new interested persons. If such persons are not willing to become parties to the modified contract, or for any other reason a modified contract is not entered into, cost-share payments shall be forfeited and refunded in accordance with the rules in paragraph (a) of this section.

(c) Upon request of the contract signers and approval of the county committee, a contract may be modified to change or add practices, or to make other changes which are consistent with this subpart, the State program, and the conservation and development plan.

(d) Upon request of the contract signers, a contract which would otherwise be in a noncompliance status at the end of the contract period under the provisions of § 755.10(a) of these regulations may be modified to extend the contract period not to exceed a total period of 10 years if the county committee determines that failure to establish the practices specified in the contract was not the result of the fault or negligence of the contract signers.

[30 FR 8669, July 9, 1965, as amended by Amdt. 5, 35 FR 8442, May 29, 1970]

§ 755.9 Termination of contracts.

The Deputy Administrator may consent to the termination of a contract in cases where the parties to the contract are unable to comply with the terms of the contract due to conditions beyond their control, in cases where compliance with the terms of the contract would work a severe hardship on the parties to the contract, or in cases where termination of the contract would be in the public interest, provided the parties to the contract refund such part of the cost-share payments made under the contract as the Deputy Administrator determines appropriate.

§ 755.10 Noncompliance.

(a) Failure to establish the practices specified in the contract within the time specified by the county committee shall be a violation of the contract and all payments under the contract shall be forfeited and refunded.

(b) Failure to maintain a practice for the contract period or the normal lifespan of the practice, whichever is shorter, in accordance with good farming practices shall be a violation of the contract and any payment made in connection with such practice shall be refunded unless the practice is restored within the time prescribed by the county committee. The normal lifespan of a practice shall be determined by the county committee.

(c) If the county committee finds that any person has adopted or participated in any practice which tends to defeat the purposes of the program, it may withhold, or require to be refunded, all or any part of cost-share payments paid or payable under the program. It shall be considered a practice defeating the purposes of the program if the contract signers do not make available for public use a recreation resource development for which costs are shared. The regulations governing nondiscrimination in federally assisted programs of the Department of Agriculture, Part 15 of this title, shall be applicable to this program.

[30 FR 8669, July 9, 1965, as amended by Amdt. 3, 32 FR 12938, Sept. 12, 1967]

§ 755.11 Signatures.

Signatures to contracts and related forms shall be in conformity with the instructions on signatures and authorizations applicable to the Agricultural Conservation Program.

§ 755.12 Filing of false claims.

The making of a fraudulent representation by a person in the payment documents or otherwise for the purpose of obtaining a payment from the county committee shall render the person liable, aside from any additional liability under criminal and civil frauds statutes, for a refund of the payments received by him with respect to which the fraudulent representation was made.

§ 755.13 Delegation of authority.

No delegation in this subpart to a State or county committee shall preclude the Administrator, or his designee, from determining any question arising under the program or reversing or modifying any determinations made by a State or county committee.

§ 755.14 Reporting performance.

The Operator of the farm, in accordance with instructions issued by the Deputy Administrator, shall report to the county committee on Form ACP-245 the extent of compliance with the terms of the contract.

§ 755.15 Handling exceptional cases.

The Deputy Administrator may allow payment for performance not meeting all program requirements, where not prohibited by statute, if in his judgment such action is needed to permit a proper disposition of the case. Such action may be taken only where the person acted in good faith and in reasonable reliance on any instruction or commitment of any member, or employee of the State or county committee or representatives of other Federal agencies assigned responsibility under the program, in meeting his obligations under the contract and in so doing reasonably accomplished the purposes of the contract. The amount of the payment shall be based on the actual performance and shall not exceed the amount to which the person would have been entitled if the performance rendered had met all requirements.

§ 755.16 Access to farms and to farm records.

County committeemen or their authorized representatives, or any authorized representative of the Secretary of Agriculture, shall have such access to farms and to records pertaining thereto as is necessary to make acreage determinations and to determine the extent of compliance with the terms of the contract.

§ 755.17 Preservation of cropland, crop acreage and allotment history.

The cropland, crop acreage, and allotment history applicable to the designated acreage shall be preserved, for any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop, for the period covered by the contract and an equal period thereafter so long as the approved practice is maintained on the land.

§ 755.18 Appeals.

Any person may obtain reconsideration and review of determinations made under this subpart in accordance with the Appeal Regulations, Part 780 of this chapter (29 FR 8200), as amended.

§ 755.19 Availability of funds.

The provisions of this program are necessarily subject to such legislation as the Congress of the United States may hereafter enact; the payments provided for in this subpart are contingent upon such appropriations as the Congress has or may hereafter provide for such purpose, and the amount of such payments must necessarily be within the limits finally determined by such appropriations.

§ 755.20 Rural community development projects.

(a) Notwithstanding any other provision of this subpart, the county committee, in accordance with instructions issued by the Deputy Administrator, may enter into a contract with a State, county, city, town, or subdivision thereof, or a group acting for such a body, which owns, operates, or occupies land in the Appalachian Region. The contracts approved under this section shall be for projects which promote rural community development and conservation of the soil and water resources of the region.

(b) Cost-sharing approved under this section shall not exceed 80 per centum of the cost of carrying out the approved land uses and conservation treatment on 50 acres of land occupied by such owner, operator, or occupier.

[35 FR 8442, May 29, 1970]

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

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Subpart—Dairy Indemnity Payment Programs

AUTHORITY: Secs. 1, 2, 3, Pub. L. 90-484, 82 Stat. 750, as amended; sec. 204, Pub. L. 91-524, 84 Stat. 1361; sec. 5, Pub. L. 93-86, 87 Stat. 223; sec. 205, Pub. L. 95-113, 91 Stat. 920 (7 U.S.C. 450j, k, l).

SOURCE: 43 FR 10535, Mar. 14, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 760.1 Administration.

This indemnity payment program will be carried out by ASCS under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

§ 760.2 Definitions.

For purposes of this subject, the following terms shall have the meanings specified:

(a) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom he has delegated, or to whom he may hereafter delegate, authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Deputy Administrator" means the Deputy Administrator, State and County Operations, ASCS.

(d) "State committee" means the Agricultural Stabilization and Conservation State committee.

(e) "County committee" means the Agricultural Stabilization and Conservation county committee.

(f) "Pesticide" means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 through 135k), and approved for use by the Federal Government.

(g) "Chemicals or Toxic Substances" means any chemical substance or mixture as defined in the Toxic Substances Control Act (15 U.S.C. 2602).

(h) "Nuclear Radiation or Fallout" means contamination from nuclear radiation or fallout from any source.

(i) "Violating Substance" means one or more of the items defined in paragraphs (f), (g), and (h) of this section.

(j) "Public agency" means any Federal, State or local public regulatory agency.

(k) "Affected farmer" means a person who produces whole milk which is removed from the commerical market any time from:

(1) January 1, 1964, to September 30, 1985, pursuant to the direction of a public agency because of the detection of pesticide residues in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency, or

(2) October 1, 1977, to September 30, 1985, pursuant to the direction of a public agency because of the detection of other residues of chemicals or toxic substances residues, or contamination from nuclear radiation or fallout in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(l) "Affected manufacturer" means a person who manufactures dairy products which are removed from the commercial market any time from November 30, 1970, to September 30, 1985, pursuant to the direction of a public agency because of the detection of pesticide residue in such dairy products by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(m) "Milk handler" means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he was directed by the public agency to remove his whole milk from the commercial market.

(n) "Person" means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(o) "Application period" means any period beginning not earlier than January 1, 1964, and ending not later than September 30, 1985, during which an affected farmer's whole milk is removed from the commercial market pursuant to direction of a public agency for a reason specified in paragraph (k) of this section and for which application for payment is made.

(p) "Pay period" means (1) in the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk handler in settling with the affected farmer for his whole milk, usually biweekly or monthly, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

(q) "Whole milk" means milk as it is produced by cows.

(r) "Commercial market" means (1) the market to which the affected farmer normally delivers his whole milk and from which it was removed because of detection therein of a residue of a violating substance(s) or (2) the market to which the affected manufacturer normally delivers his dairy products and from which they were removed because of detection therein of pesticide residue.

(s) "Removed from the commercial market" means (1) produced and destroyed or fed to livestock, (2) produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk), or (3) produced and otherwise diverted to other than the commercial market.

(t) "Payment subject to refund" means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

(u) "Base period" means the calendar month or 4-week period immediately preceding removal of milk from the market.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979; 50 FR 34449, Aug. 26, 1985]

PAYMENTS TO DAIRY FARMERS FOR MILK

§ 760.3 Indemnity payments on milk.

An indemnity payment for milk may be made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of his normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less (a) any amount he received for whole milk marketed during the applications period, and (b) any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.4 Normal marketings of milk.

(a) The county committee shall determine the affected farmer's normal marketings which, for the purposes of this subpart, shall be the sum of the quantities of whole milk which such farmer would have sold in the commercial market in each of the pay periods in the application period but for the removal of his whole milk from the commercial market because of the detection of a residue of a violating substance.

(b) Normal marketings for each pay period are based on the average daily production during the base period.

(c) Normal marketings determined in paragraph (b) of this section are adjusted for any change in the daily average number of cows milked during each pay period the milk is off the market compared with the average number of cows milked daily during the base period.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period shall be reduced so that they represent only that part of such pay period which is within the application period.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979]

§ 760.5 Fair market value of milk.

(a) The county committee shall determine the fair market value of the affected farmer's normal marketings, which, for the purposes of this subpart, shall be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period.

(b) The county committee shall determine the net proceeds the affected farmer would have received in each of the pay periods in the application period (1) in the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk, as determined by the county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the county committee shall deduct from the gross price therefor any transportation, administrative, and other costs of marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.

§ 760.6 Information to be furnished.

The affected farmer shall furnish to the county committee complete and accurate information sufficient to enable the county committee or the Deputy Administrator to make the determinations required in this subpart. Such information shall include, but is not limited to:

(a) A copy of the notice from, or other evidence of action by, the public agency which resulted in the removal of the affected farmer's whole milk from the commercial market.

(b) The specific name of the violating substance causing the removal of his whole milk from the commercial market, if not included in the notice or other evidence of action furnished under paragraph (a) of this section.

(c) The quantity and butterfat test of whole milk produced and marketed during the base period. This information must be a certified statement from the affected farmer's milk handler or any other evidence the county committee accepts as an accurate record of milk production and butterfat tests during the base period.

(d) The average number of cows milked during the base period and during each pay period in the application.

(e) If the affected farmer markets his whole milk through a milk handler, a statement from the milk handler showing, for each pay period in the application period, the average price per hundred-weight of whole milk similar in quality to that marketed by the affected farmer during the base period used to determine his normal marketings. If the milk handler has information as to the transportation, administrative, and other costs of marketing which are normally incurred by producers who market through the milk handler but which the affected farmer did not incur because of removal of his whole milk from the market, the average price stated by the milk handler shall be the average gross price paid producers less any such costs. If the milk handler does not have such information, the affected farmer shall furnish a statement setting forth such costs, if any.

(f) The amount of proceeds, if any, received by the affected farmer from the marketing of whole milk produced during the application period.

(g) The amount of any payments not subject to refund made to the affected farmer by the milk handler with respect to the whole milk produced during the application period and remove from the commercial market.

(h) To the extent that such information is available to the affected farmer, the name of any pesticide, chemical, or toxic substance used on the farm within 24 months prior to the application period, the use made of the pesticide, chemical, or toxic substance, the approximate date of such use, and the name of the manufacturer and the registration number, if any, on the label on the container of the pesticide, chemical, or toxic substance.

(i) To the extent possible, the source of the pesticide, chemical, or toxic substance that caused the contamination of the whole milk, and the results of any laboratory tests on the feed supply.

(j) Such other information as the county committee may request to enable the county committee or the Deputy Administrator to make the determinations required in this subpart.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, June 22, 1979]

§ 760.7 Other requirements for affected farmers.

An indemnity payment for milk may be made under this subpart to an affected farmer only under the following conditions:

(a) If the pesticide, chemical, or toxic substance, contaminating the milk was used by the affected farmer, he established each of the following:

(1) That the pesticide, chemical or toxic substance, when used, was registered (if applicable) and approved for use as provided in § 760.2(f);

(2) That the contamination of his milk was not the result of his failure to use the pesticide, chemical, or toxic substance, according to the directions and limitations stated on the label;

(3) That the contamination of his milk was not otherwise his fault.

(b) If the pesticide, chemical, or toxic substance contaminating the milk was not used by the affected farmer, he establishes each of the following:

(1) He did not know or have reason to believe that any feed which he purchased and which contaminated his milk contained a harmful residue of a pesticide, a chemical, or a toxic substance or was contaminated by nuclear radiation or fallout.

(2) None of the milk was produced by dairy cattle which he knew, or had reason to know at the time he acquired them, were contaminated with residues of pesticides, chemicals or toxic substances, or by nuclear radiation or fallout.

(3) The contamination of his milk was not otherwise his fault.

(c) The affected farmer has adopted recommended practices for eliminating residues of pesticides, chemicals, or toxic substances or contamination from nuclear radiation or fallout from his milk as soon as practicable following the discovery of the initial contamination.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.8 Application for payments for milk.

The affected farmer or his legal representative, as provided in §§ 760.25 and 760.29, must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county ASCS office for the county where the farm headquarters are located no later than October 7, 1985, or such later date as the Deputy Administrator may specify. The application for payment shall cover application periods of at least 28 days, except that, if the entire application period, or the last application period, is shorter than 28 days, applications for payment may be filed for such shorter period. The application for payment shall be accompanied by the information required by § 760.6 as well as any other information which will enable the county committee to determine whether the making of an indemnity payment is precluded for any of the reasons set forth in § 760.7. Such information shall be submitted on forms approved for the purpose by the Deputy Administrator.

[43 FR 10535, Mar. 14, 1978, as amended at 50 FR 34449, Aug. 26, 1985]

§ 760.9 Other legal recourse.

(a) No indemnity payment shall be made for contaminated milk resulting from residues of chemicals or toxic substances if, within 30 days after receiving a complete application, the Deputy Administrator determines that other legal recouse is available to the farmer. An application shall not be deemed complete unless it contains all information necessary to make a determination as to whether other legal recourse is available to the farmer. However, notwithstanding such a determination, the Deputy Administrator may reopen the case at a later date and make a new determination on the merits of the case as may be just and equitable.

(b) In the event that a farmer receives an indemnity payment under this subpart, and such farmer is later compensated for the same loss by the person (or the representative or successor in interest of such person) responsible for such loss, the indemnity payment shall be refunded by the farmer to the Department of Agriculture: *Provided*, That the amount of such refund shall not exceed the amount of other compensation received by the farmer.

[Amdt. 1, 44 FR 36361, June 22, 1979]

PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

§ 760.20 Payments to manufacturers of dairy products.

An indemnity payment may be made to the affected manufacturer who is determined by the Deputy Administrator to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of the product removed from the commercial market because of pesticide residues, less any amount the manufacturer receives for the product in the form of salvage.

NOTE: Manufacturers are not eligible for payment when dairy products are contaminated by chemicals, toxic substances (other than pesticides) or nuclear radiation or fallout.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.21 Application for payments by manufacturers.

The affected manufacturer, or his legal representatives, shall file an application for payment with the Deputy Administrator, ASCS, Washington, D.C., through the county office serving the county where the contaminated product is located. The application for payment may be in the form of a letter or memorandum. Such letter or memorandum, however, must be accompanied by acceptable documentation to support such application for payment.

§ 760.22 Information to be furnished by manufacturer.

The affected manufacturer shall furnish the Deputy Administrator, through the county committee, complete and accurate information sufficient to enable him to make the determination as to the manufacturer's eligibility to receive an indemnity payment. Such information shall include, but is not limited to:

(a) A copy of the notice or other evidence of action by the public agency which resulted in the product being removed from the commerical market.

(b) The name of the pesticide causing the removal of the product from the commerical market and, to the extent possible, the source of the pesticide.

(c) A record of the quantity of milk or butterfat used to produce the product for which an indemnity payment is requested.

(d) The identity of any pesticide used by the affected manufacturer.

(e) Such other information as the Deputy Administrator may request to enable him to make the determinations required in this subpart.

§ 760.23 Other requirements for manufacturers.

An indemnity payment may be made under this subpart to an affected manufacturer only under the following conditions:

(a) If the pesticide contaminating the product was used by the affected manufacturer, he establishes each of the following: (1) That the pesticide, when used, was registered and recommended for such use as provided in § 760.2(f); (2) that the contamination of his product was not the result of his failure to use the pesticide in accordance with the directions and limitations stated on the label of the pesticide; and (3) that the contamination of his product was not otherwise his fault.

(b) If the pesticide contaminating the product was not used by the affected manufacturer: (1) He did not know or have reason to believe that the milk from which the product was processed contained a harmful level of pesticide residue, and (2) the contamination of his product was not otherwise his fault.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

GENERAL PROVISIONS

§ 760.24 Limitation of authority.

(a) County executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county committee. The State committee may also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude the Deputy Administrator or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 760.25 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purpose of this subpart, be considered to represent an insolvent affected farmer or manufacturer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be the production of the person or manufacturer he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer or manufacturer who is a minor shall be eligible for indemnity payments only if he meets one of the following requirements:

(1) The right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 760.26 Appeals.

The appeal regulations issued by the Administrator, ASCS, Part 780 of this chapter, shall be applicabie to appeals by dairy farmers or manufacturers from determinations made pursuant to the regulations in this subpart.

§ 760.27 Setoffs.

(a) If the affected farmer or manufacturer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, indemnity payments due the affected farmer or manufacturer under the regulations in this part shall be applied, as provided in the Secretary's setoff regulations, Part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the affected farmer or manufacturer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.28 Overdisbursement.

If the indemnity payment disbursed to an affected farmer or to a manufacturer exceeds the amount authorized under the regulations in this subpart, the affected farmer or manufacturer shall be personally liable for repayment of the amount of such excess.

§ 760.29 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected farmer or manufacturer who would otherwise receive an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in Part 707 of this chapter. The person requesting such payment shall file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.30 Records and inspection thereof.

(a) The affected farmer, as well as his milk handler and any other person who furnished information to such farmer or to the county committee for the purpose of enabling such farmer to receive a milk indemnity payment under this subpart, shall maintain any existing books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected farmer, his milk handler, and any other person who furnishes such information to the affected farmer or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

(b) The affected manufacturer or any other person who furnishes information to the Deputy Administrator for the purposes of enabling such manufacturer to receive an indemnity payment under this subpart shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected manufacturer or any other person who furnishes such information to the Deputy Administrator shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

§ 760.31 Assignment.

No assignment shall be made of any indemnity payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart shall be null and void.

§ 760.32 Instructions and forms.

The Deputy Administrator shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Affected farmers and manufacturers may obtain information necessary to make application for a dairy indemnity payment from the county ASCS office. Form ASCS-373—Application for Indemnity Payment, is available at the county ASC office.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.33 Availability of funds.

Payment of indemnity claims will be contingent upon the availability of funds to the Department to pay such claims. With respect to claims filed after October 1, 1982, if the Department determines that the amount of claims to be filed under the program will exceed the funds available to the Department, to pay such claims payments will be made so that each eligible claimant will receive a pro rata share of the remaining funds available to the Department to pay dairy indemnity claims.

(Approved by Office of Management and Budget under control number 0560-0045)

[48 FR 40367, Sept. 7, 1983 and 49 FR 8906, Mar. 9, 1984]

§ 760.34 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0045.

[49 FR 29564, July 23, 1984]

Subpart—Beekeeper Indemnity Payment Program (1978–80)

AUTHORITY: Sec. 804, Pub. L. 91-524, 84 Stat. 1382, as amended by sec. 1 (27), Pub. L. 93-86, 87 Stat. 237, and sec. 207, Pub. L. 95-113, 91 Stat. 931 (7 U.S.C. 135b), unless otherwise noted.

SOURCE: 43 FR 30264, July 14, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 760.100 Administration.

The beekeeper indemnity payment program is administered by the Agricultural Stabilization and Conservation Service under the supervision and direction of the Deputy Administrator, State and County Operations. In the field, the program is carried out by the State and county ASC committees.

§ 760.101 Definitions.

For the purpose of this subpart, the following terms shall have the meaning specified:

(a) "Apiary" means the place where bees are kept, commonly known as a "bee yard."

(b) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1978, and ending not later than October 9, 1980.

(c) "ASCS" means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) "Bee" means the honeybee, Apis mellifera L.

(e) "Beekeeper" means a person who owns and maintains colonies of bees.

(f) "Colony" means a community of bees living together in a hive with a queen.

(g) "Colony destroyed" means a colony in which the kill of bees by pesticides was so severe that the colony will not survive.

(h) "Colony moderately damaged" means a colony so damaged by pesticides as to destroy only the field bees.

(i) "Colony severely damaged" means a colony in which the field bees were killed by pesticides and the colony suffered damage to the brood, but the colony will survive.

(j) "County committee" means the Agricultural Stabilization and Conservation County Committee.

(k) "DASCO" means the Deputy Administrator, State and County Operations, ASCS.

(l) "Person" means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(m) "Pesticide" means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 through 135k), and approved for use by the Federal Government.

(n) "Queen nucleus" means a small colony of bees maintained solely for the purpose of producing queen bees.

(o) "Queen nucleus destroyed" means a queen nucleus in which the kill of bees by pesticides was so severe that the queen nucleus did not survive.

(p) "State committee" means the Agricultural Stabilization and Conservation State Committee.

(Sec. 804, 87 Stat. 1382 (7 U.S.C. 135b note); sec. 1(27), 87 Stat. 237 (7 U.S.C. 135b note); and sec. 207, 91 Stat. 921 (7 U.S.C. 284 note))

[43 FR 30264; July 14, 1978, as amended by Amdt. 3, 45 FR 59299, Sept. 9, 1980]

§ 760.102 Indemnity payment.

An indemnity payment computed in accordance with § 760.109 will be made under this subpart to a beekeeper who has suffered a severe loss of bees as a result of the application of pesticides and who establishes to the satisfaction of the county committee that all requirements of this subpart have been met.

§ 760.103 Requirements for eligibility.

(a) A beekeeper, to be eligible for an indemnity payment, shall file an application for payment with the county committee and establish to the satisfaction of the county committee all of the following:

(1) That during the application period, a loss of bees was suffered.

(2) That the loss of bees was caused solely by the use of pesticides near or adjacent to the apiary, and occurred through no fault of the beekeeper.

(3) That if the beekeeper used pesticides, such use of pesticides in no way contributed to the loss of the bees.

(4) That if the beekeeper had advance knowledge that pesticides were going to be used near or adjacent to the apiary, the beekeeper took reasonable precautions to protect the bees from exposure to pesticides, or, if the beekeeper took no such precautions, that the failure to do so was reasonable under the circumstances.

(5) That after exposure of the bees to pesticides, the beekeeper took reasonable action to minimize the bee loss to the extent that such action was feasible.

(6) That at or about the time a bee loss inspection was first requested during the calendar year, the beekeeper submitted to the county ASCS office, where the headquarters are located, a signed statement specifying the number of colonies and queen nuclei maintained at each apiary and the location of each apiary: *Provided, however*, That this statement was subsequently amended to satisfactorily explain any changes made in such numbers between the date of the original statement and the date of any subsequent inspection of the apiary. The number of colonies and queen nuclei specified in this statement, as amended, shall be the maximum number for which the beekeeper will be eligible to receive an indemnity payment.

§ 760.104 Application for payment.

(a) The beekeeper or a legal representative of the beekeeper shall complete, sign, and file an application for payment, Form ASCS-448 with the county ASCS office serving the area where the beekeeper's headquarters is located.

(b) Application for payment shall be filed not later than April 1 following the year in which the losses occurred. The application shall be postmarked not later than midnight April 1 of such year. An application may be filed after the closing date if the county committee determines that the beekeeper was prevented from filing by such date because of illness or other reason beyond the beekeeper's control. The beekeeper should file only one application per year covering all losses occurring during such calendar year.

(c) The application for payment shall be accompanied by the information required by §§ 760.105 through 760.109, and such other information as may be reasonably required to enable the county committee to determine the eligibility of the beekeeper to receive an indemnity payment.

§ 760.105 Proving loss of bees.

(a) A beekeeper shall submit to the county committee an executed Form ASCS-448, specifying the number of colonies destroyed, the number of colonies severely damaged, the number of colonies moderately damaged; and the number of queen nuclei destroyed; and evidence of the loss of bees specified in paragraph (b) of this section.

(b) Such evidence shall be a written report by an ASCS inspector who has observed the loss. Any report under this paragraph shall:

(1) Describe the losses of bees which have been observed by the inspector.

(2) Give full information regarding the loss, including but not limited to the following:

(i) Extent of loss (number of colonies destroyed, severely or moderately damaged, and number of queen nuclei destroyed);

(ii) Approximate date of loss;

(iii) Location of apiary.

(3) Be completed, signed, and dated within a reasonable time following the loss.

(c) If the report required by paragraph (b) of this section is based on inspections of only a sample of the colonies in an apiary, the following guidelines shall be substantially complied with in selecting the samples of colonies to be examined:

(1) Count the colonies in the apiary.

(2) Select the colonies to be included in the sample from all areas of the apiary so as to assure that the sample is representative of conditions in the apiary as a whole. Colonies to be inspected should be selected at random to assure an accurate determination of the extent of loss in the apiary.

(3) Open and thoroughly inspect at least the specified number of colonies for the applicable size of apiary. Apiary of 1-15 colonies, all colonies. Apiary of 16-75 colonies, 15 colonies. Apiary of more than 75 colonies, 20 percent of the colonies.

(d) No change in the degree of loss of bees which occurs after October 1 each year will be recognized and no payment will be made for any loss of queen nuclei which occurs between July 1 and December 31 each year.

§ 760.106 Proving utilization of pesticides.

A beekeeper shall submit to the county committee evidence that the loss of bees occurred as a result of the utilization of pesticides near or adjacent to the apiary. Such evidence may include, but is not limited to:

(a) Reports of chemical tests performed on the bees which were killed.

(b) Records, signed statements, or official reports of pesticide applicators or farmers who either applied pesticides or contracted for their application within the normal forage range of the beekeeper's bees.

(c) Records, signed statements, or official reports of representatives of local canneries or pesticide vendors who supplied pesticides which were used within the normal forage range of the beekeeper's bees.

(d) Records, signed statements, or official reports of local, State or Federal governmental agencies or colleges and universities having verified information with respect to the application of pesticides in the locality where the beekeeper's apiaries were located.

(e) Certification by the person that inspected the bees for pesticide damage that the loss resulted solely from pesticides and not caused by disease, starvation, or neglect.

§ 760.107 Proving non-fault.

A beekeeper shall submit to the county committee (a) a statement signed by the beekeeper stating whether the beekeeper used pesticides, and (b) if the beekeeper did use pesticides, evidence that such use thereof in no way contributed to the loss of the bees.

§ 760.108 Proving reasonable care.

A beekeeper shall submit to the county committee evidence that reasonable care was exercised by the beekeeper in connection with the use of pesticides by others. Such evidence shall consist of, but is not limited to, written statements signed by the beekeeper:

(a) Stating whether the beekeeper received advance notice that pesticides were going to be applied near or adjacent to the apiary.

(b) Describing what actions the beekeeper took (if the beekeeper received such notice) to protect the bees from pesticides, or why there was no suitable action that the beekeeper could have taken.

(c) Describing what steps were taken after exposure of the bees to pesticides, to improve the condition of the colonies and to reduce the extent of bee loss, or why there were no suitable steps that could have been taken.

§ 760.109 Computation of payment.

(a) The county committee will determine the amount of the indemnity payment due a beekeeper whom it has determined to be in compliance with the terms and conditions of this subpart. Such payment shall be in the amount of the beekeeper's net loss from losses of bees resulting from application of pesticides, less any indemnification for such loss or payment of any nature which the beekeeper has received through insurance, legal action, or otherwise. The beekeeper's indemnity payment will be computed on the basis of the following rates for losses which occurred since January 1, 1978:

(1) $22.50 for each colony destroyed,

(2) $15.00 for each colony severely damaged,

(3) $7.50 for each colony moderately damaged, and

(4) $7.50 for each queen nucleus destroyed.

(b) Only one payment will be made on a colony for losses occurring during a given calendar year. If more than one loss is suffered by a colony, the beekeeper may claim payment on the most severe loss suffered.

§ 760.110 Appeals.

The Appeal Regulations issued by the Administrator, ASCS, Part 780 of this chapter, shall be applicable to appeals by beekeepers from determinations made pursuant to the regulations in this subpart.

§ 760.111 Assignments.

A beekeeper shall not assign any indemnity payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart shall be null and void.

§ 760.112 Instructions.

DASCO shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Beekeepers may obtain such forms, including the following, from the county ASCS office: ASCS-448-Beekeeper Indemnity Payment Program Report of Loss on a Colony Basis and Application for Payment.

§ 760.113 Limitation of authority.

(a) County executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county committee. The State committee may also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO or a designee of DASCO from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 760.114 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purposes of this subpart, be considered to represent an insolvent beekeeper and the beneficiaries of a trust, respectively, and the honeybee losses of the receiver or trustee shall be considered to be the honeybee losses of the persons so represented. Program documents executed by any such person will be accepted only if such person has authority to sign the applicable documents, and such documents are otherwise legally valid.

(b) A minor who is a beekeeper shall be eligible for indemnity payments only if the minor meets one of the following requirements: (1) The rights of majority have been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 760.115 Setoffs.

(a) If any indebtedness of the beekeeper to any agency of the United States is listed on the county claims control record, indemnity payments due the beekeeper under the regulations in this part shall be applied, as provided in the Secretary's Setoff Regulations, Part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the beekeeper of any right such person would otherwise have to contest the validity of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.116 Overdisbursement.

A beekeeper shall be personally liable for repayment of the amount by which any indemnity payment disbursed to the beekeeper exceeds the amount of such payment authorized under the regulations in this subpart.

§ 760.117 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any beekeeper who is entitled to an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in Part 707 of this chapter. The persons requesting such payment shall file Forms ASCS-325, "Application For Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

§ 760.118 Records, and inspection thereof.

The beekeeper, and any other person who furnished information to such beekeeper or to the county committee to enable the beekeeper to receive an indemnity payment under this subpart, shall maintain any books, records, and accounts supporting any information furnished to the county committee, for 3 years following the end of the year during which the application for payment was filed. The beekeeper or any other person who furnished such information to the beekeeper or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

§ 760.119 Availability of funds.

Payment of indemnity claims filed after June 15, 1979, is contingent upon availability of funds to the Department to pay such claims. Claims filed after such date will be paid in full, in the order in which they were filed, to the extent that funds are available.

(Sec. 804, 84 Stat. 1382 (7 U.S.C. 135b note); sec. 1(27), 87 Stat. 237 (7 U.S.C. 135b note); and sec. 207, 91 Stat. 921 (7 U.S.C. 284 note))

[Amdt. 2, 45 FR 56007, Aug. 22, 1980]

PART 770—SPECIAL PROGRAMS OF PAYMENT IN KIND FOR ACREAGE DIVERSION FOR THE 1984 AND SUBSEQUENT CROPS OF WHEAT, FEED GRAINS, UPLAND COTTON, EXTRA LONG STAPLE COTTON, AND RICE

Sec.
770.1 General description of program.
770.2 Obligations of operators and producers.
770.3 Obligations of the Department.
770.4 Other contract provisions.
770.5 Contracting procedures.
770.6 Miscellaneous provisions.
770.7 Paperwork Reduction Act assigned number.

AUTHORITY: Secs. 101(i), 103(g), 103(h), 105B and 107B, Agricultural Act of 1949, as amended (7 U.S.C. 1441, 1444, 1444(d), 1444(g), 1444(h), and 1445b-1) and the Commodity Credit Corporation Charter Act (15 U.S.C. 714).

SOURCE: 49 FR 2227, Jan. 19, 1984, unless otherwise noted.

§ 770.1 General description of program.

(a) The Department of Agriculture, through the Commodity Credit Corporation, will enter into contracts with operators and producers who agree to reduce the acreage normally planted to a commdity specified in § 770.1(b) and devote an equivalent acreage to an approved conserving use in return for compensation in the form of the commodity for which the planted acreage is reduced. This part describes the general terms and conditions of these contracts and the procedures under which the Department will enter into such contracts.

(b) This special program is available throughout the United States, including Puerto Rico, for the 1984 and subsequent crops of wheat, corn, grain sorghum, barley, oats, upland cotton, extra long staple cotton, or rice as announced by the Secretary of Agriculture (the "Secretary").

§ 770.2 Obligations of operators and producers.

(a) The contract between the Department and the operator of a farm and any other producers on the farm will impose the following obligations on the operator and any other producers:

(1) The operator and any other producers will be required to comply with all of the requirements of any other acreage reduction or paid diversion program established by the Department for any commodity included in the contract.

(2) The operator and any other producers will be required to devote a percentage of the farm's acreage base for any commodity included in the contract to an approved conserving use in addition to any other acreage reduction or paid diversion. This percentage will depend on the contract between the Department and the operator and any other producers.

(i) The Department may enter into a contract with the operator of a farm and any other producer on the farm which provides for devoting a percentage of the farm's acreage base for one or more commodities to an approved conserving use, with a commensurate reduction in permitted acreage, if the operator and any other producers wish to do so. The operator and any other producers may select the commodities to be included in the contract, except that the Department may require that the contract include either both crops or neither crop of corn and grain sorghum or barley and oats. Compensation to operators and other producers under these contracts will be based on a fixed percentage of the farm yield for each of the commodities included in the contract. See § 770.3(a)(1). The percentage or range of percentages will be announced by the Secretary.

(ii) In addition, the Department may, in some cases, enter into a contract with the operator of a farm and any other producers on the farm which requires the operator and any other producers to devote 100 percent of the farm's acreage base for one or more commodities to an approved conserving use. These contracts will be awarded on a competitive bid basis and the compensation to an operator and any other producers under one of these contracts will be based on the percentage of the established yield for the farm for each of the commodities included in the contract which was bid by the operator and any other producers. See § 770.5(b).

(3) If the operator of a farm or any other producers on the farm have outstanding farmer owned reserve loans obtained prior to a date specified by the Secretary or regular price support loans for which they have pledged as security a commodity which the Department is obligated to pay them under the contract they must, at the time they request payment of the commodity, sell the commodity to the Department, if required by the Secretary up to the quantity of the commodity the Department is obligated to pay them. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to the Department is pledged as collateral, except that, in the case of a farmer owned reserve loan, the price will be reduced by the amount of any unearned advance storage payments received under the loan.

(4) To the extent that the operator or any other producers have loans to which paragraph (a)(3) of this section applies at the time they enter into the contract, they may liquidate those loans or forfeit the commodity securing them only to the extent that the liquidation or forfeiture does not reduce the quantity of the commodity pledged as security for the loans still

held by the operator and such other producers below the quantity of the commodity the Department is obligated to pay the operator and such other producers under the contract. The commodities pledged as security for loans that must be held under this paragraph will be used by the Department to compensate the operator and any other producers under the contract. See § 770.3(a)(2)(i).

(b) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of a program of payment in kind is to obtain a diversion of acreage from production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between the Department and producers, the Department, and other segments of the agricultural community, act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The Department's action include budgeting and planning for programs in subsequent crop years, as well as making the necessary arrangements to compensate producers through payment in kind. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on the Department of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damage suffered by the Department.

§ 770.3 Obligations of the Department.

(a) The contract between the Department and the operator of a farm and any other producers on the farm will impose the following obligations on the Department:

(1) The Department will be required to compensate the operator and any other producers for devoting acreage to an approved conserving use by payment of a quantity of the commodity or commodities that would otherwise have been produced, unless the substitution of a different commodity is provided for in the contract. The quantity shall be the yield for the farm for a commodity multiplied by the acreage devoted to a conserving use in accordance with the provisions of the contract less the acreage devoted to a conserving use as required under any acreage reduction and cash land diversion program which is in effect for the commodity, multiplied by a percentage determined as follows:

(i) For contracts awarded on a competitive bid basis, the percentage shall be the percentage bid by the operator and any other producers.

(ii) For contracts other than those awarded on a competitive bid basis, the percentage shall be the percentage announced by the Secretary.

(2) The contract will provide that the commodities will be paid in the following manner:

(i) To the extent that the operator and any other producers have outstanding regular price support or farmer owned reserve loans for which they have pledged as security a commodity which they must sell to the Department, the commodities sold to the Department will be paid to the operator and such other producers. See § 770.2(a)(3).

(ii) To the extent that a commodity cannot be paid using the procedure described in paragraph (a)(2)(i) of this section, the producer may be required to pledge as collateral for a price support loan eligible quantities of the crop produced in the current crop year and then be paid the commodity using the procedure described in paragraph (a)(2)(i) of this section.

(iii) To the extent that a commodity cannot be paid using the procedures described in paragraphs (a)(2)(i) and (ii) of this section, the contract may provide that the commodity shall be paid out of stocks available to the Department for that purpose. Alternatively, as announced by the Secretary, the contract may provide that the producer will be released from the obligations under the contract rather than receiving any quantity of the commodity.

(3) The contract will provide that the commodities will be paid upon request of the operator and any other producers at any time during the five month period with a date announced for the commodity in the area where the area where the farm is located.

(4) The contract may contain special arrangemelts and requirements with respect to the Department's obligations to producers who are active members of a marketing cooperative.

§ 770.4 Other contract provisions.

(a) The contract between the Department and the operator of a farm and any other producers on the farm will establish staldards for the grade and other characteristics affecting the quality of any commodity the Department is obligated to pay to the operator and any other producers. It will further provide for adjustments in the quantity of a commodity paid to this operator and any other producers to compensate for any difference between these standards and the grade ald other characteristics affecting the quality of the commodity paid to the operator and any other producers. For the purpose of determining these adjustmelts, a commodity paid under the procedure described in § 770.3(a)(2)(i) shall be treated as having the grade and other characteristics affecting its quality which it was treated as having at the time that the price support or farmer owned reserve loan for which it was pledged as security was made.

(b) The contract between the Department and the operator of a farm and any other producers on the farm shall contain such other provisions as the Department determines appropriate to carry out the program established by this part.

§ 770.5 Contracting procedures.

(a) An operator of a farm and any other producers on the farm may enter into a contract with the Department, which provides for devoting a percentage of the farm's acreage base, as determined in accordance with § 770.2, to an approved conserving use. The contract may be entered into at the appropriate county ASCS office prior to the close of business on a date to be announced by the Secretary.

(b) An operator of a farm and any other producers on the farm may submit a bid for a contract with the Department, which provides for devoting 100 percent of the farm's acreage base for one or more commodities to an approved conserving use. The bid may be submitted to the appropriate county ASCS office prior to the close of business on a date to be announced by the Secretary.

(1) The operator and any other producers may select the commodities to be included in the bid, except that the Department may require that the bid include either both crops or neither crop of corn and grain sorghum, or barley and oats.

(2) The bid shall state the percentage of the established yield for the farm for each of the commodities included in the bid to be used in determining the compensation to be paid to the operator and any other producers under the contract if the bid is accepted. The operator and any other producers may select any percentage, except that the maximum percentage and other conditions will be announced by the Secretary.

(c) After the final date for submitting bids, the bids in each county shall be ranked for each commodity, treating corn and grain sorghum or barley and oats as single commodities, if so required by the Department, on the basis of the percentage of established yield to be used in determining compensation stated in the bids, with the lowest percentage being ranked highest. In the case of identical bids, they shall be ranked in the order received or, where an appointment procedure was utilized by the county ASCS office during the course of which producers submitted bids, a lottery shall be conducted to determine the order by which such bids should be ranked. The bids for each commodity shall then be accepted in rank order. The Department will establish the number of acres for which bids will be accepted for each commodity in each county, based on particular supply/demand situations, conditions in local communities, and other relevant factors. In no case will more than 50 percent of the total of the acreage bases for a commodity in a county be removed from production of the commodity under the program established by this part and any other acreage reduction or diversion program established under Part 713 of this chapter. Acceptance of a bid under this subsection with respect to a commodity shall terminate any contractual obligations with respect to that commodity entered into under paragraph (a) of this section.

§ 770.6 Miscellaneous provisions.

(a) Part 795 of this chapter contains regulations which govern the applicability of the payment limitations imposed by section 1101 of the Agriculture and Food Act of 1981. Payments in kind received under the programs established by this part with respect to 1984 and subsequent crops shall be taken into account in the application of the payment limitation regulations set forth at Part 795 of this chapter. The value assigned to the payment in kind for this purpose will be based upon the county price support loan rate applicable to the commodity for the crop year for which the payment in kind program has been implemented.

(b) Part 713 of this chapter contains regulations which govern regular annual acreage reduction and diversion and other programs for wheat, feed grains, cotton and rice. Sections 713.60 through 713.74 of that part concerning land eligible for designation as conserving use acreage and the obligations of producers with respect to the use of that acreage shall apply to the program established by this part.

(c) In addition, the following provisions of this title concerning general program administration also apply to the program established by this part:

(1) Part 707—Payments Due Persons Who have Died, Disappeared, or Have Been Declared Incompetent.

(2) Part 718—Determination of Acreage and Compliance.

(3) Part 780—Appeal Regulations.

(4) Part 790—Incomplete Performance Based Upon Action Or Advice of an Authorized Representative of the Secretary.

(5) Part 791—Authority to Make Payments Where There Has Been a Failure to Comply Fully with the Program.

(6) Part 1403—Interest on Delinquent Debts.

(7) Section 110 of Part 713 concerning protection of tenants and sharecroppers.

(d) When any person who had an interest as a producer in the commodity or would have had an interest in the commodity as a producer if the commodity had been planted (herein called "predecessor") is succeeded on the farm by another producer (herein called "successor") after a contract has been executed, any payment in kind which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the Department agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract.

(e) Assignments with repect to quantities of a commodity which can be received by a producer as payment in kind will be recognized by the Department only if such assignment is made on Form CCC-479, Assignment of Payment-In-Kind, executed by the assignor and assignee, and filed with the county committee.

(f) Except as provided in paragraph (e) of this section, any payment in kind or portion thereof which is due any person shall be made without regard to questions of title under State law, and without regard to any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor, except for a levy by the Internal Revenue Service.

§ 770.7 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 770) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0092.

PART 780—APPEAL REGULATIONS

Sec.
780.1 Basis, purpose and applicability.
780.2 Definitions.
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780.12 Delegation of authority.

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, sec. 403, 61 Stat. 932, sec. 375, 52 Stat. 66, secs. 1-4, 73 Stat. 574, secs. 101, 103, 105, 107, 301, 401, 407, 63 Stat. 1051, sec. 151, 75 Stat. 306, sec. 307, 76 Stat. 617, secs. 702-709, 68 Stat. 910-912, sec. 124, 70 Stat. 198, secs. 7-17, 49 Stat. 1148; 15 U.S.C. 714b, 714c, 1153, 1375, 1421, 1427, 1427 nt., 1441, 1444-1447, 1781-1787, 1812; 16 U.S.C. 590g-590q.

SOURCE: 29 FR 8200, June 30, 1964, unless otherwise noted.

§ 780.1 Basis, purpose and applicability.

The regulations contained in this part are issued pursuant to the Soil Conservation and Domestic Allotment Act, as amended; the Soil Bank Act, as amended; the Agricultural Adjustment Act of 1938, as amended; the Agricultural Act of 1961; the Food and Agriculture Act of 1962; the Agricultural Act of 1949, as amended; the Commodity Credit Corporation Charter Act, as amended; the Sugar Act of 1948, as amended; the Act of September 21, 1959; the National Wool Act of 1954, as amended, and other relevant statutes; and prescribe the rules and procedures whereby a producer or participant may obtain reconsideration and review of determinations made by the county committee or office, State committee, or Deputy Administrator under the following programs:

(a) Agricultural Conservation Program (Part 701 of this chapter).

(b) Land Use Adjustment Program (Part 751 of this chapter).

(c) Soil Bank Program (except matters classified as violations which are governed by separate regulations) (Part 750 of this chapter).

(d) Allotment Programs for cotton (Part 722 of this chapter), tobacco (Parts 724 and 725 of this chapter), wheat (Part 728 of this chapter), peanuts (Part 729 of this chapter), and rice (Part 730 of this chapter), except when marketing quotas are in effect for the commodity and the matter being appealed is a factor bearing upon a marketing quota being determined for the farm in which case review under Part 711 of this chapter shall be applicable.

(e) Feed Grain Program (Part 775 of this chapter).

(f) Wheat Stabilization Program (Part 776 of this chapter).

(g) CCC Loan and Purchase Programs (Parts 1421, 1427, 1434, 1443, 1446, 1474 of this title).

(h) Sugar Programs (Parts 849, 850, 855, 856, 857, 861, 862, 863, 864, 866, 867, 868, 891, 892, 893, 894, 895 of this title).

(i) Wool and Mohair Programs (Parts 1468, 1472 of this title).

(j) Livestock Feed Programs (Part 1475 of this title).

(k) Wheat Diversion Program (Part 728 of this chapter).

(l) Farm Wheat Marketing Certificate Program (Part 728 of this chapter).

(m) 1964 and 1965 Cotton Domestic Allotment Program (Part 1427 of this title).

(n) Upland Cotton and Extra Long Staple Cotton Programs (Part 722 of this chapter).

(o) Regional Agricultural Conservation Programs (Part 755 of this chapter).

(p) All other programs to which this part is made applicable by individual program regulations.

The regulations in this part shall be applicable to any request for reconsideration or appeal which is filed after the effective date of this part and shall supersede any regulations relating to requests for reconsideration or appeals contained in individual program regulations.

[29 FR 8200, June 30, 1964; 29 FR 8460, July 7, 1964, as amended by Amdt. 1, 31 FR 7393, May 21, 1966; Amdt. 3, 35 FR 71, Jan. 3, 1970]

§ 780.2 Definitions.

(a) "County committee" and "Deputy Administrator" shall have the meaning given to them under the regulations governing Reconstitution of Farms, Farm Allotments and Farm History and Soil Bank Base Acreages, Part 719 of this chapter, as amended.

(b) "Producer or participant" shall mean any person whose right to participate or receive payments, or the amount thereof, under any of the programs covered by these regulations, is affected by a determination of the county committee, State committee, or Deputy Administrator. In matters involving wage claims under the Sugar Program, "producer or participant" includes any person employed on the farm in production, cultivation and harvesting work who has a claim for unpaid wages. "Producer or participant" also includes a vendor of conservation materials and services under the Agricultural Conservation Program, the Land Use Adjustment Program, or the Soil Bank Program.

(c) "Reviewing authority" shall mean the county committee, State committee, or Deputy Administrator, as appropriate.

(d) "State committee" shall have the meaning given to it under the regulations governing Reconstitution of Farms, Farm Allotments, and Bases, Part 719 of this chapter, as amended. In Puerto Rico and the Virgin Islands, the Director of the Caribbean Area ASCS Office shall, insofar as applicable, perform the functions of the State committee.

[29 FR 8200, June 30, 1964, as amended by Amdt. 6, 36 FR 25146, Dec. 29, 1971]

§ 780.3 Request for reconsideration.

Any producer or participant who is dissatisfied with any determination initially made by the county committee or office, State committee, or Deputy Administrator, may obtain a reconsideration of such determination and an informal hearing in connection therewith by filing a request for reconsideration with the county committee. If the initial determination was made by the State committee or the Deputy Administrator, the county committee shall forward the request for reconsideration to the authority initially making the determination.

[29 FR 8200, June 30, 1964; 29 FR 8460, July 2, 1964]

§ 780.4 Appeal to the State committee.

Any producer or participant who is dissatisfied with the determination of the county committee upon its reconsideration of the initial determination made by it or the county office may obtain a review of such determination by the State committee and an informal hearing in connection therewith by filing an appeal with the State committee.

§ 780.5 Appeal to Deputy Administrator.

Except as provided in § 780.11 (a) and (b), any producer or participant who is dissatisfied with the determination of the State committee upon reconsideration of its determination or upon appeal from a determination of the county committee may obtain a review by the Deputy Administrator of such determination and an informal hearing in connection therewith by filing an appeal with the Deputy Administrator.

§ 780.6 Time limitations for filing requests for reconsideration or appeals.

(a) A request for reconsideration or appeal from any determination shall be filed within 15 days after the written notice of the determination is mailed to or other wise made available to the producer or participant. A request for reconsideration or appeal shall be considered "filed" when personally delivered or, if mail is used, when post-marked.

(b) Whenever the final date for filing a request for reconsideration or appeal prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which such office is not open for the transaction of business during normal working hours, the time for filing shall be extended to the close of business on the next working day.

(c) A request for reconsideration or appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the reviewing authority to whom it is made, the circumstances warrant such action.

(d) A request or appeal filed with a reviewing authority other than the appropriate one provided for in this part shall not be denied because of misdirection of the request or because misdirection delays receipt of the request by the appropriate reviewing authority.

[29 FR 8200, June 30, 1964, as amended by Amdt. 2, 32 FR 8676, June 16, 1967]

§ 780.7 Form of request for reconsideration or appeal.

Each request for reconsideration or appeal shall be in writing and signed by the producer or participant or by his authorized representative. Each request for reconsideration or appeal shall be supported by a written statement of facts, which may be submitted with or as a part of the request for reconsideration or appeal, or at any time prior to the hearing. The producer or participant may request an informal hearing or may request a determination to be made by the reviewing authority without a hearing on the basis of the written statement submitted by him and other information available to the reviewing authority.

§ 780.8 Nature of informal hearing.

(a) The hearing shall be held at the time and place designated by the reviewing authority.

(b) The hearing shall be conducted by the reviewing authority in the manner deemed most likely to obtain the facts relevant to the matter in issue. The producer or participant shall be advised of the issues involved. The reviewing authority may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(c) The producer or participant or his representative shall be given a full opportunity to present facts and information relevant to the matter in issue and may present oral or documentary evidence. At its discretion, the reviewing authority may request or permit persons other than those appearing on behalf of the producer or participant to give information or evidence at such hearing and, in such event, may permit the producer or participant to question such persons.

(d) The reviewing authority shall have prepared a written record containing a clear, concise statement of the facts as asserted by the producer or participant and material facts found by the reviewing authority. The names of interested persons appearing at the hearing shall be included. Any documents presented in evidence should be identified. A verbatim transcript may be taken if (1) the producer or participant requests the reviewing authority prior to the time the hearing begins to provide for such transcript, and (2) agrees to pay the expense thereof, or (3) the reviewing authority feels that the nature of the case is such as to make such transcript desirable.

(e) If, at the time scheduled for the hearing, the producer or participant is absent and no appearance is made on his behalf, the reviewing authority shall, after a lapse of such period of time as he may consider proper and reasonable, close the hearing, or may, in its discretion, accept information and evidence submitted by other persons present at the hearing.

[29 FR 8200, June 30, 1964, as amended by Amdt. 6, 36 FR 25146, Dec. 29, 1971]

§ 780.9 Determination.

(a) The reviewing authority prior to making a determination may request the producer or participant to produce additional evidence which it may deem relevant or may develop additional evidence from other sources. Upon reconsideration or review and within program authorities, the reviewing authority may affirm, modify, or reverse any determination made by it initially or made by a lower reviewing authority, or may remand the matter to a lower reviewing authority for such further consideration as is deemed appropriate. The producer or participant shall be notified in writing of the determination. The notification shall clearly set forth the basis for the determination. Each other person affected by the determination shall be notified in writing of the determination.

Determinations made by the Deputy Administrator shall not be appealable by the producer or participant.

(b) When a producer requests copies of documents, information, or evidence upon which a determination is made or which will form the basis of the determination, copies of such documents, information or evidence shall be made available as provided in Part 798 of this chapter.

[Amdt. 3, 35 FR 71, Jan. 3, 1970]

§ 780.10 Reopening of hearing.

The reviewing authority may, upon its own motion or upon request of the producer or participant, reopen any hearing for any reason it deems appropriate unless the matter has been appealed to or considered by a higher reviewing authority.

§ 780.11 Requests for reconsideration and appeals requiring special handling.

(a) Determinations made by a State committee with respect to (1) the establishment of farm yields for wheat, feed grain, and cotton, (2) the establishment of wheat allotments, (3) the establishment of farm feed grain allotments, (4) the establishment of upland cotton base acreage allotments, (5) matters arising under the tobacco discount variety program, (6) eligibility provisions of the livestock feed program, (7) the disaster provisions of the wheat, feed grain, and upland cotton programs that a loss on a farm was due in whole or in part to causes other than the natural disaster or conditions beyond the control of the producer, (8) the establishment of rice allotments, and (9) crop appraisals by the Agricultural Stabilization and Conservation Service (ASCS) and by Federal Crop Insurance Corporation for ASCS are not appealable to the Deputy Administrator, State and County Operations.

(b) In matters arising under the Agricultural Conservation Program involving the misuse of a purchase order by a vendor of conservation materials and services, the vendor may appeal to the Deputy Administrator only on the issue as to whether the facts reasonably support the determination of the State committee.

(c) Matters arising under the (1) Agricultural Conservation Program involving a finding or certification by a technician of the Soil Conservation Services or Forest Service, or (2) appraisal redeterminations under the wheat, feed grain, upland cotton, or rice programs by Federal Crop Insurance Corporation or Agricultural Stabilization and Conservation Service, shall be binding on the reviewing authority.

[42 FR 58162, Nov. 8, 1977]

§ 780.12 Delegation of authority.

Nothing contained in these regulations in this part shall preclude the Administrator, ASCS (Executive Vice-President, CCC), or his designee, on his own motion, from determining any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determinations made by a State or county committee or the Deputy Administrator.

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.
781.1 General
781.2 Definitions.
781.3 Reporting requirements.
781.4 Assessment of penalties.
781.5 Penalty review procedure.
781.6 Paperwork Reduction Act assigned number.

AUTHORITY: Sec. 1-10, 92 Stat. 1266 (7 U.S.C. 3501 *et seq.*).

SOURCE: 49 FR 35074, Sept. 6, 1984, unless otherwise noted.

§ 781.1 General.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations require that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by the Agricultural Stablization and Conservation

Service (ASCS) pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by the Economic Research Service (ERS) concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this Part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA.* AFIDA means the Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural Land.* Agricultural land means land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, forestry, or timber production, except land not exceeding ten acres in the aggregate if the annual gross receipts from the sale of the farm, ranch, forestry, or timber products produced thereon do not exceed $1,000. Farming, ranching, forestry, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1972), Division A, exclusive of industry numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise and wildlife management.

(c) *Any Interest.* Any interest means all interest acquired, transferred or held in agricultural lands by a foreign person, except:

(1) Security interests;

(2) Leaseholds of less than 10 years;

(3) Contingent future interests;

(4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate;

(5) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production; and

(6) An interest solely in mineral rights.

(d) *County.* County means a political subdivision of a State identified as a County or parish. In Alaska, the term means an area so designated by the State Agricultural Stabilization and Conservation committee.

(e) *Foreign Government.* Foreign government means any government other than the United States government, the government of a State, or a political subdivision of a State.

(f) *Foreign Individual.* Foreign individual means foreign person as defined in paragraph (g)(1) of this section.

(g) *Foreign Person.* Foreign person means:

(1) Any individual:

(i) Who is not a citizen or national of the United States; or

(ii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) Who is not lawfully admitted to the United States for permanent residence or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any foreign government;

(4) Any person, other than an individual or a government:

(i) Which is created or organized under the laws of any State; and

(ii) In which a significant interest or substantial control is directly or indirectly held:

(A) By any individual referred to in paragraph (g)(1) of this section; or

(B) By any person referred to in paragraph (g)(2) of this section; or

(C) By any foreign government referred to in paragraph (g)(3) of this section; or

(D) By any numerical combination of such individuals, persons, or governments, which combination need not have a common objective.

(h) *Person.* Person means any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary.* Secretary means the Secretary of Agriculture.

(j) *Security Interest.* Security interest means a mortgage or other debt securing instrument.

(k) *Significant Interest of Substantial Control.* Significant interest or substantial control means:

(1) An interest of 10 percent or more held by a person referred to in paragraph (g)(4) of this section, by a single individual referred to in paragraph (g)(1) of this section, by a single person referred to in paragraph (g)(2) of this section, by a single government referred to in paragraph (g)(3) of this section; or

(2) An interest of 10 percent or more held by persons referred to in paragraph (g)(4) of this section, by individuals referred to in paragraph (g)(1) of this section, by persons referred to in paragraph (g)(2) of this section, or by governments referred to in paragraph (g)(3) of this section, whenever such persons, individuals, or governments are acting in concert with respect to such interest even though no single individual, person, or government holds an interest of 10 percent or more; or

(3) An interest of 50 percent or more, in the aggregate, held by persons referred to in paragraph (g)(4) of this section, by individuals referred to in paragraph (g)(1) of this section, by persons referred to in paragraph (g)(2) of this section, or by governments referred to in paragraph (g)(3) of this section, even though such individuals, persons, or governments may not be acting in concert.

(l) *State.* State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

§ 781.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS County office in the County where the land with respect to which such report must be filed is located or where the ASCS County office administering programs carried out on such land is located.

(b) Any foreign person who held, holds, acquires, or transfers any interest in United States agricultural land is subject to the requirement of filing a report on form ASCS-153 by the following dates:

(1) August 1, 1979, if the interest in the agricultural land was held on the day before February 2, 1979, or

(2) Ninety days after the date of acquisition or transfer of the interest in the agricultural land, if the interest was acquired or transferred on or after February 2, 1979.

(c) Any person who holds or acquires any interest in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person must submit, not later than 90 days after the date on which such person becomes a foreign person, a report containing the information required to be submitted under paragraph (e) of this section.

(d) Any foreign person who holds or acquires any interest in United States land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report containing the information required to be submitted under paragraph (e) of this section.

(e) Any foreign person required to submit a report under this regulation, except under paragraph (g) of this section, shall file an ASCS-153 report containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the person holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for, such interest; the amount of the purchase price or the value of the consideration yet to be given; the current estimated value of the land reported;

(7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and

(i) In any case in which such transferee is an individual, the citizenship of such transferee; and

(ii) In any case in which such transferee is not an individual, or a government, the nature of the person holding the interest, the country in which such transferee is created or organized, and the principal place of business;

(8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;

(9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS-153 form for the foreign person;

(10) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement; and

(11) The date the interest in the land was acquired or transferred.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), and (d) of this section, must submit, in addition to the report required under paragraph (e) of this section, a report containing the following information:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of significant interest or substantial control in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this section may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (f)(1) of this section, if such individual or government holds any interest in such foreign person:

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or a government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of paragraph (f) of this section may also be required, upon request, to:

(1) Submit a report containing:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which each holder is created or organized, and the principal place of business of such holder.

(2) Submit a report containing:

(i) The legal name and address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (g)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section, disclosing information relating to nonforeign interest holders;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section disclosing information relating to nonforeign interest holders, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(h)(1) Any person which has issued fewer than 100,000 shares of common and preferred stock and instruments convertible into equivalents thereof shall be considered to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that persons with foreign mailing addresses hold significant interest or substantial control in such person.

(2) Any person which has issued 100,000 or more shares of common and preferred stock and instruments convertible into equivalents thereof shall be considerd to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that the percentage of shares held in such person both by persons with foreign mailing addresses and investment institutions which manage shares does not equal or exceed significant interest or substantial control in such person.

(3) If the person in paragraph 2 above determines that the percentage of shares, which is held in it both by persons with foreign mailing addresses and investment institutions which manage shares, equals or exceeds significant interest or substantial control in such persons, then such person shall be considered to have satisfactorily attempted to determine whether it has an obligation to file a report pursuant to § 781.3 if it sends questionnaires to each such investment institution holding an interest in it inquiring as to whether the persons for which they are investing are foreign persons and the percentage of shares reflected by the affirmative responses from each such investment institution plus the percentage of shares held by persons listed on the business records with foreign mailing addresses does not reveal that foreign persons hold significant interest or substantial control in such person.

(i) Any foreign person, who submitted a report under paragraph (b), (c), or (d) of this section at a time when such land was agricultural, and such agricultural land later ceases to be agricultural, must submit, not later than 90 days after the date on which such land ceases being agricultural, a revised report from ASCS-153 or a written notification of the change of status of the land to the ASCS office where the report form was originally filed. The report form and notification must contain the following information:

(1) The legal name and the address of such foreign person;

(2) The legal description, which includes the State and county where the land is located, and the acreage of such land;

(3) The date the land ceases to be agricultural;

(4) The use of the land while agricultural.

(j) If any foreign person who submitted a report under paragraph (b), (c), or (d) of this section ceases to be a foreign person, such person must submit, not later than 90 days after the date such person ceases being a foreign person, a written notification of the change of status of the person to the ASCS office where the report form ASCS-153 was originally filed. The notification must contain the following information:

(1) The legal name of such person;

(2) The legal description and acreage of such land;

(3) The date such person ceases to be foreign.

(k) Any foreign person who submitted a report under paragraph (b), (c), or (d) of this section must submit, not later than 90 days after the change of information contained on the report, a written notification of the change to the ASCS office where the report form ASCS-153 was originally filed. The following information must be kept current on the report:

(1) The legal address of such foreign person;

(2) The legal name and the address required to be submitted under (f)(1) of this section;

(3) The legal name and the address required to be submitted under (g)(1) of this section.

§ 781.4 Assessment of penalties.

(a) Violation of the reporting obligations will consist of:

(1) Failure to submit any report in accordance with § 781.3;

(2) Failure to maintain any submitted report with accurate information; or

(3) Submission of a report which the foreign person knows:

(i) Does not contain, initially or within thirty days from the date of a letter returning for completion such incomplete report, all the information required to be in such report; or

(ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

(1) Late-filed reports: One-tenth of one percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land, with respect to which such violation occurred, for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed 25 percent of the fair market value of the foreign person's interest in such land.

(2) Submission of an incomplete report or a report containing misleading or false information, failure to submit a report or failure to maintain a submitted report with accurate information: 25 percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(3) Penalties prescribed above are subject to downward adjustments based on factors including:

(i) Total time the violation existed.

(ii) Method of discovery of the violation.

(iii) Extenuating circumstances concerning the violation.

(iv) Nature of the information misstated or not reported.

(c) The fair market value for the land, with respect to which such violation occurred, shall be such value on the date the penalty is assessed, or if the land is no longer agricultural, on the date it was last used as agricultural land. The price or current estimated value reported by the foreign person, as verified and/or adjusted by the County Agricultural Stabilization and Conservation Committee for the County where the land is located, will be considered to be the fair market value.

§ 781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 781.4, a written notice of apparent liability will be sent to the foreign person's last known address by the Agricultural Stabilization and Conservation Service. This notice will set forth the facts which indicate apparent liability, identify the type of violation listed in paragraph (a) of § 781.4 which is involved, state the amount of the penalty to be imposed, include a statement of fair market value of the foreign person's interest in the subject land, and summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If a foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph.

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report, if required, in compliance with § 781.3. The amount shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(3) Submission of a written request for a Hearing with the Administrator or with the Administrator's designee. The request should be submitted to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Submission of such a request does not preclude submission of the statement described in paragraph (b)(2) of this section; either or both may be submitted.

(c)(1) If a Hearing is requested, it will be held in Washington, D.C. at a place determined by the Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture or the Administrator's designee. The Administrator or the Administrator's designee will preside at the Hearing The appellant shall bear all personal costs connected with such a Hearing.

(2) The Hearing will be scheduled for any mutually convenient time within 30 days after the request is filed with the Administrator, or at a time designated by the Administrator or the Administrator's designee.

(3) At the Hearing, the foreign person may appear personally or be represented by a person of the foreign person's choice and will be afforded an opportunity to state a position and question the factual basis for the notice of apparent liability and the amount of the penalty to be imposed.

(4) A summary of the Hearing will be prepared by the presiding official and transmitted to the Administrator.

(5) The failure of the foreign person to appear at the time and place appointed for the Hearing shall constitute a waiver of the foreign person's right to such a Hearing.

(d) After the submission of a written statement and/or after the Hearing, as prescribed in paragraphs (b) and (c) of this section, the Administrator will make a determination based on all relevant information available.

(e) Notice of the Administrator's determination, stating whether a report must be filed or amended in compliance with § 781.3, the amount of the penalty (if any), and the date by which it must be paid, will thereupon be mailed to the foreign person by the Administrator or the Administrator's designee. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(f) If the foreign person contests the notice of apparent liability by submitting a written statement or a request for a hearing thereon, the foreign person may elect either to pay the penalty or decline to pay the penalty pending resolution of the matter by the Administrator. If the Administrator determines that the foreign person is not liable for the penalty or is liable for less than the amount paid, the payment will be wholly or proportionally refunded. If the Administrator ultimately determines that the foreign person is liable, the penalty finally imposed shall not exceed the amount imposed in the notice of apparent liability.

(g) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or fails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

(h) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR Part 13.

§ 781.6 Paper Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 781) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0097.

SUBCHAPTER E—PROVISIONS COMMON TO MORE THAN ONE PROGRAM

PART 790—INCOMPLETE PERFORMANCE BASED UPON ACTION OR ADVICE OF AN AUTHORIZED REPRESENTATIVE OF THE SECRETARY

Sec.
790.1 Applicability.
790.2 Action.
790.3 Delegation of authority.
790.4 Filing of request for consideration.

AUTHORITY: Sec. 326, 76 Stat. 631, 77 Stat. 47, 79 Stat. 1192; 7 U.S.C. 1339a.

§ 790.1 Applicability.

This part is applicable to all programs set forth in this Title 7, administered by the Agricultural Stabilization and Conservation Service, hereinafter referred to as "ASCS," under which price support is extended or payments are made to farmers.

[30 FR 17154, Dec. 31, 1965]

§ 790.2 Action.

(a) Notwithstanding any other provision of law, performance rendered in good faith in reliance upon action or advice of any authorized representative of a county committee or State committee as defined in Part 719 of this chapter, may be accepted by the Administrator, ASCS (Executive Vice President, CCC), the Associate Administrator, ASCS (Vice President, CCC), or the Deputy Administrator, State and County Operations, ASCS (Vice President, CCC), as meeting the requirements of the applicable program, and price support may be extended or payment may be made therefor in accordance with such action or advice to the extent it is deemed desirable in order to provide fair and equitable treatment.

(b) The provisions of this part shall be applicable only if a producer relied upon action or advice of a county or State committee or an authorized representative of such committee in rendering performance which the producer believed in good faith met the requirements of the applicable program. The authority provided in this part does not extend to cases where the producer knew or had sufficient reason to know that the action or advice of the committee of its authorized representative upon which he relied was improper or erroneous, or where the producer acted in reliance on his own misunderstanding or misinterpretation of program provisions, notices or advice.

[Amdt. 11, 32 FR 8955, June 23, 1967, as amended by Amdt. 2, 41 FR 34247, Aug. 13, 1976; Amdt. 4, 47 FR 46999, Oct. 22, 1982; 48 FR 32324, July 15, 1983]

§ 790.3 Delegation of authority.

The State committee may, in accordance with instructions issued by the Deputy Administrator, Programs, ASCS, exercise the authority provided in this part in programs administered by the ASCS in cases where the total of any payments and price support extended under this part does not exceed $1,500.

[Amdt. 11, 32 FR 8955, June 23, 1967, as amended by Amdt. 2, 41 FR 34247, Aug. 13, 1976; Amdt. 4, 47 FR 46999, Oct. 22, 1982; 48 FR 32324, July 15, 1983]

§ 790.4 Filing of request for consideration.

Any person who feels that he is entitled to consideration under the provisions of this part may file a request therefor with the county committee.

[30 FR 17154, Dec. 31, 1965]

PART 791—AUTHORITY TO MAKE PAYMENTS WHEN THERE HAS BEEN A FAILURE TO COMPLY FULLY WITH THE PROGRAM

Sec.
791.1 Applicability.
791.2 The making of loans, purchases, and payments when there has been a failure to fully comply with the program.
791.3 Delegation of authority.

AUTHORITY: Sec. 602, 79 Stat. 1206, 7 U.S.C. 1838; sec. 379b, 84 Stat. 1362, 7 U.S.C. 1379b; sec. 105, 84 Stat. 1368, 7 U.S.C. 1441 note; sec. 103, 84 Stat. 1374, 7 U.S.C. 1444, unless otherwise noted.

§ 791.1 Applicability.

This part is applicable to the wheat, feed grain, upland cotton, and rice programs, and to all other programs to which this part is made applicable by individual program regulations.

(Secs. 101(i), 103(g), 105B, 107B; 95 Stat. 1242, 1234, 1227, 1221 (7 U.S.C. 1441, 1444, 1444d, 1445b-1)

[Amdt. 4, 47 FR 47000, Oct. 22, 1982]

§ 791.2 The making of loans, purchases, and payments when there has been a failure to fully comply with the program.

In any case in which the failure of a producer to comply fully with the terms and conditions of any program to which this part is applicable precludes the making of loans, purchases, or payments, the Deputy Administrator, State and County Operations, may, nevertheless, authorize the making of such loans, purchases or payments in such amounts as determined to be equitable in relation to the seriousness of the failure. The provisions of this part shall be applicable only to producers who made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance. Any person who feels that he or she is entitled to consideration under the provisions of this part may file a request therefor with the County Committee.

(Secs. 101(i), 103(g), 105B, 107B; 95 Stat. 1242, 1234, 1227, 1221 (7 U.S.C. 1441, 1444, 1444d, 1445b-1)

[Amdt. 4, 47 FR 47000, Oct. 22, 1982]

§ 791.3 Delegation of authority.

The authority contained in this part may be redelegated in whole or in part.

[37 FR 13526, July 11, 1972]

PART 793—RULE OF FRACTIONS

Sec.
793.1 Applicability.
793.2 Basic rule of fractions.
793.3 Payments to producers.

AUTHORITY: Sec. 4, 49 Stat. 164, 16 U.S.C. 590d; sec. 16(i), 79 Stat. 1190, 16 U.S.C. 590p (i); sec. 105(e), 79 Stat. 1188, as amended, 7 U.S.C. 1441 note; sec 602(q), 79 Stat. 1210, 7 U.S.C. 1838(q); sec. 375, 52 Stat. 66, as amended, 7 U.S.C. 1375; sec. 379j, 76 Stat. 690, 7 U.S.C. 1379j; sec. 103(d), 79 Stat. 1194, 7 U.S.C. 1444(d); sec. 203(g), 79 Stat. 13, 40 U.S.C. App. A; secs. 4 and 5, 62 Stat. 1070, 15 U.S.C. 714 b and c; sec. 401, 62 Stat. 1054, 7 U.S.C. 1421; sec. 706, 68 Stat. 912, 7 U.S.C. 1785; sec. 403, 61 Stat. 932, 7 U.S.C. 1153.

SOURCE: 41 FR 2805, Jan. 20, 1976, unless otherwise noted.

§ 793.1 Applicability.

This part is applicable to the acreage allotment and marketing quota programs and to all other programs set forth in this Title 7 administered by the Agricultural Stabilization and Conservation Service under which price support is extended or payments are made to farmers, except that it does not apply to the pricing and sales of agricultural commodities and it does not apply to the determination of acreage when a different rule is specifically provided in Part 718 of this chapter.

§ 793.2 Basic rule of fractions.

In making mathematical determinations all computations shall be carried to two decimal places beyond the required number of decimal places as specified in the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure at the last required decimal place shall be increased by "1" as follows:

Required decimal	Computation	Result
Whole numbers.	6.49 (or less)	6
	6.50 (or more)	7
Tenths	7.649 (or less)	7.6
	7.650 (or more)	7.7
Hundredths	8.8449 (or less)	8.84
	8.8450 (or more)	8.85
Thousandths	9.63449 (or less)	9.634
	9.63450 (or more)	9.635
10 thousandths	10.993149 (or less)	10.9931
	10.993150 (or more)	10.9932

§ 793.3 Payments to producers.

Notwithstanding any other provision of this part, if due to the rounding of fractions the sum of the payments distributed among producers does not equal the total amount earned under the program, the payments shall be adjusted in order that the sum thereof will equal such total amount.

PART 795—PAYMENT LIMITATION

GENERAL

Sec.
795.1 [Reserved]
795.2 Applicability.

DEFINITION

795.3 Definition of the term "person."
795.4 Definitions of other terms.

DETERMINATION WHETHER MULTIPLE INDIVIDUALS OR OTHER ENTITIES CONSTITUTE ONE OR SEPARATE PERSONS

795.5 Timing for determining status of persons.
795.6 Multiple individuals or other entities.
795.7 Entities or joint operations not considered as a person.
795.8 Corporations and stockholders.
795.9 Estate or trust.
795.10 Club, society, fraternal or religious organization.
795.11 Husband and wife.
795.12 Minor children.
795.13 Other cases.

FARMING OPERATIONS

795.14 Changes in farming operations.
795.15 Determination whether agreement is a share lease or a cash lease.
795.16 Custom farming.

SCHEME OR DEVICE

795.17 Scheme or device.

MISCELLANEOUS

795.20 Joint and several liability.
795.21 Appeals.
795.22 Interpretations.
795.23 Paperwork Reduction Act assigned number.

AUTHORITY: 7 U.S.C. 1308, unless otherwise noted.

SOURCE: 43 FR 9784, Mar. 10, 1978, unless otherwise noted.

GENERAL

§ 795.1 [Reserved]

§ 795.2 Applicability.

(a) The provisions of this part are applicable to payments when so provided by the individual program regulations under which the payments are made. The amount of the limitation shall be as specified in the individual program regulations.

(b) The limitation shall be applied to the payments for a commodity for a crop year.

[49 FR 14719, Apr. 13, 1984]

DEFINITIONS

§ 795.3 Definition of the term "person".

Subject to the provisions of this part, the term "person" shall mean an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order to be considered a separate person for the purpose of the payment limitation, in addition to the other conditions of this part, the individual or other legal entity must:

(a) Have a separate and distinct interest in the land or the crop involved,

(b) Exercise separate responsibility for such interest, and

(c) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

§ 795.4 Definitions of other terms.

In the regulations in this part and in all instructions, forms, and documents in connection therewith, all words and phrases, other than the term "person", shall have the meanings assigned to them in the regulations governing reconstitutions of farms, allotments, and bases, Part 719 of this chapter, as amended.

DETERMINATION WHETHER MULTIPLE INDIVIDUALS OR OTHER ENTITIES CONSTITUTE ONE OR SEPARATE PERSONS

§ 795.5 Timing for determining status of persons.

Except as otherwise set forth in this part, the status of individuals or entities on March 1 of the current year shall be the basis on which determinations are made under the regulations for such year.

§ 795.6 Multiple individuals or other entities.

The rules in §§ 795.5 through 795.16 shall be used to determine whether certain multiple individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the limitation. In cases in which more than one rule would appear to be applicable, the rule which is most restrictive on the number of persons shall apply.

§ 795.7 Entities or joint operations not considered as a person.

A partnership, joint venture, tenants-in-common, or joint tenants shall not be considered as a person but, notwithstanding the provisions of § 795.3, each individual or other legal entity who shares in the proceeds derived from farming by such joint operations shall be considered a separate person, except as otherwise provided in this part, and shall be listed as a producer for payment purposes on program documents. The payment shares listed on the program documents for each individual or other legal entity shall be the same as each individual or other legal entity shares in the proceeds derived from farming by such joint operation. Notwithstanding the foregoing, each individual or other legal entity who shares in the proceeds derived from farming by such joint operation shall not be considered as a separate person unless the individual or other legal entity is actively engaged in the farming operations of the partnership or other joint operation. An individual or other legal entity shall be considered as actively engaged in the farming operation only if its contribution to the joint operation is commensurate with its share in the proceeds derived from farming by such joint operation. Members of the partnership or joint venture must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the proceeds. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual. If the contribution consists substantially of capital, such capital must have been contributed directly to the joint operation by the individual or other legal entity and not acquired as a result of (a) a loan made to the joint operation, (b) a loan which was made to such individual or other legal entity by the joint operation or any of its members or related entities, or (c) a loan made to such individual or other legal entity which was guaranteed by the joint operation or any of its members or related entities.

§ 795.8 Corporations and stockholders.

(a) A corporation (including a limited partnership) shall be considered as one person, and an individual stockholder of the corporation may be considered as a separate person to the extent that such stockholder is engaged in the production of the crop as a separate producer and otherwise meets the requirements of § 795.3, except that a corporation in which more than 50 percent of the stock is owned by an individual (including the stock owned by the individual's spouse, minor children, and trusts for the benefit of such minor children), or by a legal entity, shall not be considered as a separate person from such individual or legal entity.

(b) Where the same two or more individuals or other legal entities own more than 50 percent of the stock in each of two or more corporations, all such corporations shall be considered as one person.

(c) The percentage share of the value of the stock owned by an individual or other legal entity shall be determined as of March 1 of the crop year, except that where a stockholder voluntarily acquires stock after March 1 and before the harvest of the crop, the amount of any stock so acquired shall be included in determining the percentage share of the value of the stock owned by the stockholder. Where there is only one class of stock, a stockholder's percentage share of the value of the outstanding stock shall be equal to the percentage of the outstanding stock owned by the stockholder. If the corporation has more than one class of stock the percentage share of the value of the stock owned by a stockholder shall be determined by the Deputy Administrator on the basis of market quotations, and if market quotations are lacking or too scarce to be recognized the percentage share of the value of the stock shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value, including the rights and privileges of the various stock issues.

(Title I, Agricultural Act of 1970, as amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93-86, 87 Stat. 221 (7 U.S.C. 1307) and under Title I, Rice Production Act of 1975, Pub. L. 94-214, 90 Stat. 181 (7 U.S.C. 428c note), and Pub. L. 95-156, 91 Stat. 1264 (7 U.S.C. 1307 note, 7 U.S.C. 1307, 7 U.S.C. 1441))

[43 FR 9784, Mar. 10, 1978, as amended at 45 FR 10311, Feb. 15, 1980; 45 FR 11795, Feb. 22, 1980]

§ 795.9 Estate or trust.

(a) An estate or irrevocable trust shall be considered as one person except that, where two or more estates or irrevocable trusts have common beneficiaries or heirs (including spouses and minor children) with more than a 50-percent interest, all such estates or irrevocable trusts shall be considered as one person.

(b) An individual heir of an estate or beneficiary of a trust may be considered as a separate person to the extent that such heir or beneficiary is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3, except that an estate or irrevocable trust which has a sole heir or beneficiary shall not be considered as a separate person from such heir or beneficiary.

(c) Where an irrevocable trust or an estate is a producer on a farm and one or more of the beneficiaries or heirs of such trust or estate are minor children, the minor children's pro rata share of the program payments to the trust or estate shall be attributed to the parent of the minor children except as otherwise provided in § 795.12.

(d) A revocable trust shall not be considered as a separate person from the grantor.

§ 795.10 Club, society, fraternal or religious organization.

Each individual club, society, fraternal or religious organization may be considered as a separate person to the extent that each such club, society, fraternal or religious organization is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3.

§ 795.11 Husband and wife.

A husband and wife shall be considered as one person.

§ 795.12 Minor children.

(a) A minor child and his parents or guardian (or other person responsible for him) shall be considered as one person, except that the minor child may be considered as a separate person if such minor child is a producer on a farm in which the parents or guardian or other person responsible for him (including any entity in which the parents or guardian or other person responsible for him has a substantial interest, i.e., more than a 20-percent interest) takes no part in the operation of the farm (including any activities as a custom farmer) and owns no interest in the farm or allotment or in any portion of the production on the farm, and if such minor child:

(1) Is represented by a court-appointed guardian who is required by law to make a separate accounting for the minor and ownership of the farm is vested in the minor, or

(2) Has established and maintains a different household from his parents or guardian and personally carries out the actual farming operations on the farm for which there is a separate accounting, or

(3) Has a farming operation resulting from his being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(b) A person shall be considered a minor until he reaches 18 years of age. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor for purposes of applying the regulations.

§ 795.13 Other cases.

Where the county committee is unable to determine whether certain individuals or legal entities involved in the production of a commodity are to be treated as one person or separate persons, all the facts regarding the arrangement under which the commodity is produced shall be submitted to the State committee for decision. Where the State committee is unable to determine whether such individuals or legal entities are to be treated as one person or separate persons, all the facts regarding the arrangement under which the farming operation is conducted shall be submitted to the Deputy Administrator for decision.

FARMING OPERATIONS

§ 795.14 Changes in farming operations.

(a) Subject to the provisions of this part, a person may exercise his or her right heretofore existing under law, to divide, sell, transfer, rent, or lease his or her property if such division, sale, transfer, rental arrangement, or lease is legally binding as between the parties thereto. However, any document representing a division, sale, transfer, rental arrangement, or lease which is fictitious or not legally binding as between the parties thereto shall be considered to be for the purpose of evading the payment limitation and shall be disregarded for the purpose of applying the payment limitation. Any change in farming operations that would otherwise serve to increase the number of persons for application of the payment limitation must be bona fide and substantive.

(b) A substantive change includes, for example, a substantial increase or decrease in the size of the farm by purchase, sale, or lease; a substantial increase or decrease in the size of allotment by purchase, sale, or lease; a change from a cash lease to a share lease or vice versa; and dissolution of an entity such as a corporation or partnership.

(c) Examples of the types of changes that would not be considered as substantive are the following:

Example 1. A corporation is owned equally by four shareholders. The corporation owns land, buildings, and equipment and in the prior year carried out substantial farming operations. Three of the shareholders propose forming a partnership which they would own equally. The partnership would cash lease land and equipment from the corporation with the objective of having the three partners considered as separate persons for purposes of applying the payment limitation under the provisions of § 795.7 of the regulations.

The formation of such a partnership and the leasing of land from a corporation in which they hold a major interest would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the partners would be limited to a single payment limitation.

Example 2. Three individuals each have individual farming operations which, if continued unchanged, would permit them to have a total of three payment limitations.

The three individuals propose forming a corporation which they would own equally. The corporation would then cash lease a portion of the farmland owned and previously operated by the individuals with the objective of having the corporation considered as a separate person for purposes of applying the payment limitation under the provisions of § 795.8 of the regulations. The formation of such a corporation and the leasing of land from the stockholders would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the three individuals would be limited to three payment limitations.

§ 795.15 Determination whether agreement is a share lease or a cash lease.

(a) *Cash lease.* In any case where a cash rental agreement contains provisions that call for an increase or decrease in the cash rent on the basis of the amount of the crop produced or the proceeds derived from the crop, such agreement shall be regarded as a share rental agreement for the purposes of this part if treating it as a cash rental agreement would result in a smaller reduction in program payments under this part.

(b) *Share lease.* In any case of a share rental agreement which contains provisions for a guaranteed minimum rental or a limitation on the amount of rent to be paid to the landlord by the tenant, such agreement shall be regarded as a cash rental agreement for the purposes of this part if treating it as a share rental agreement would result in a smaller reduction in program payments under the regulations in this part.

§ 795.16 Custom farming.

(a) Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for hire with remuneration on a unit of work basis, except that, for the purpose of applying the provisions of this section, the harvesting of crops and the application of agricultural chemicals by firms regularly engaged in such businesses shall not be regarded as custom farming. A person performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person performing the custom farming (and any other entity in which such person has more than a 20-percent interest) has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or any other similar capacity.

(b) A person having more than a 20-percent interest in any legal entity performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming service is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person having such interest in the legal entity performing the custom farming has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the corp, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or in any other similar capacity.

SCHEME OR DEVICE

§ 795.17 Scheme or device.

All or any part of the payments otherwise due a person under the upland cotton, wheat, feed grain and rice programs on all farms in which the person has an interest may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part or submitting false information to the county committee (for example, a set-aside agreement which is entered into that differs from information furnished to the county committee concerning the manner in which program payments are actually shared, concerning the actual facts of a sale, or concerning the transfer of property) or creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

MISCELLANEOUS

§ 795.20 Joint and several liability.

Where two or more individuals or legal entities, who are treated as one person hereunder, receive payments which in the aggregate exceed the limitation, such individuals or legal entities shall be liable, jointly and severally, for any liability arising therefrom. The provisions of this part requiring the refund of payments shall be applicable in addition to any liability under criminal and civil fraud statutes.

§ 795.21 Appeals.

Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations, Part 780 of this chapter, as amended.

§ 795.22 Interpretations.

In interpretations previously issued pursuant to the payment limitation regulations and published at 36 FR 16569, 37 FR 3049, 39 FR 15021 and 41 FR 17527 shall be applicable in construing the provisions of this part.

§ 795.23 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 795) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0096.

[49 FR 14719, Apr. 13, 1984]

PART 796—HARVESTING OF MARIHUANA OR OTHER SUCH DRUG-PRODUCING PLANTS FOR ILLEGAL USE

Sec.
796.1 Applicability.
796.2 Prohibition against payments to producers or participants.

§ 796.1 Applicability.

This part is applicable to all programs set forth in this Title 7, administered by the Agricultural Stabilization and Conservation Service under which production or other payments, including wheat marketing certificates, are made to producers or program participants.

(Sec. 508, Pub. L. 92-73, 85 Stat. 201)

[36 FR 21277, Nov. 5, 1971, as amended at 48 FR 35600, Aug. 5, 1983]

§ 796.2 Prohibition against payments to producers or participants.

Notwithstanding any other provision of the programs to which this part is applicable, no payment shall be made after August 10, 1971, to any producer or program participant who, after August 10, 1971, harvests or knowingly permits to be harvested for illegal use, marihuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by such producer or participant. Prohibited plants include marihuana (*cannabis sativa*), opium poppies (*papaver somniferum*), coca bushes (*erythroxylum coca*), cactii of the genus *lophophora*, and other drug-producing plants, the planting, growing, or harvesting of which is prohibited by Federal or State law.

(Sec. 508, Pub. L. 92-73, 85 Stat. 201)

[36 FR 21277, Nov. 5, 1971, as amended at 48 FR 35600, Aug. 5, 1983]

SUBCHAPTER F—PUBLIC RECORDS

PART 798—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
798.1 General statement.
798.2 Public inspection and copying.
798.3 Index.
798.4 Requests for records.
798.5 Appeals.
798.6 Fees.

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1 through 1.16.

Source: 44 FR 10353, Feb. 20, 1979, unless otherwise noted.

§ 798.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16, and Appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations as implemented by the regulations in this part, govern the availability of records of the ASCS and Commodity Credit Corporation (CCC) to the public.

§ 798.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by ASCS and/or CCC at the Office of the Director, Information Division, Agricultural Stabilization and Conservation Service, Room 3608 South Building, P.O. Box 2415, Washington, D.C. 20013, between the hours of 8:15 and 4:45 p.m., Monday through Friday.

[50 FR 53259, Dec. 31, 1985]

§ 798.3 Index.

5 U.S.C. 552(a)(2) requires that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. ASCS maintains an index of ASCS National Handbooks, CCC Board Dockets, decisions of the Board of Contract Appeals of the Department of Agriculture affecting ASCS or CCC, and Marketing Quota Review Committee determinations. In view of the small number of public requests for such index, publication of the index is unnecessary and impractical. The index is maintained and available to the public at the office shown in § 798.2 and copies of the index are available upon request in person or by mail to that office.

§ 798.4 Request for records.

Request for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3. Reasonable requests for material not in existence may also be honored where their compilation will not unduly interfere with ASCS operations and programs. Each ASCS office in the field and each ASCS office and division in Washington (see statement of Organization and Functions of ASCS, 40 FR 18815, and of CCC, 35 FR 14951, and any amendments thereto) is designated as an "information center" and shall make space available to inspect and copy records in their custody not exempted from disclosure. Copies of records shall also be made available upon request. The head of each office or division is authorized to receive requests for records and to make determinations regarding requests for records in the office's custody in accordance with 7 CFR 1.4(c). Requests to Washington divisions and offices shall be addressed to USDA, ASCS, P.O. Box 2415, Washington, D.C. 20013. The heads of ASCS field offices shall be addressed as listed in the local telephone directory under "U.S. Government, Department of Agriculture, ASCS". Names and addresses of heads of field offices may also be obtained from the office indicated in § 798.2.

§ 798.5 Appeals.

Any person whose request under § 798.4 of this part is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Administrator, ASCS (Executive Vice-President, CCC), USDA, ASCS, P.O. Box 2415, Washington, D.C. 20013.

§ 798.6 Fees.

This schedule supplements the fee schedule in 7 CFR, Part 1, Subpart A, Appendix A and sets forth the fees to be charged by ASCS for providing copies of records, materials, and services not covered in Appendix A:

(a) Records, materials and services furnished without cost.

(1) One copy each of related directives, or blank forms required by ASCS for program participation, if requester is a program participant.

(2) List of names and addresses of county and/or community committee members, and names of county employees in the county.

(3) One copy of an investigation report furnished to an appellant for a program appeal.

(b) Records, materials and services for which fees are charged.

(1) *National Handbooks.* Three dollars for the first copy. One dollar for each additional copy. (The term "copy" includes all national amendments to date. They will be furnished separately for the requester to assemble).

(2) *Field Supplementation to National Handbooks.* Five cents per page, not to exceed $3, for each supplement.

(3) *Computerized Records.* The requester shall furnish the necessary reels when computerized records are furnished on magnetic tape.

SUBCHAPTER G—ENVIRONMENTAL PROTECTION

PART 799—ENVIRONMENTAL QUALITY AND RELATED ENVIRONMENTAL CONCERNS—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

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799.2 Purpose.
799.3 Applicability.
799.4 Definitions.
799.5 ASCS officials and offices responsible for carrying out NEPA.
769.6 Adoption of regulations issued by others in implementing the procedural provisions of NEPA.
799.7 Early involvement in private and state and local activities requiring Federal approval.
799.8 Making supplements to EISs a part of the final administrative record.
799.9 Ensuring that environmental factors are considered in agency decisionmaking.
799.10 Criteria and identification of ASCS actions as to degree of involvement under the NEPA process.
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APPENDIX 1—ORGANIZATION CHART—ASCS-USDA
APPENDIX 2—FORM ASCS-929

AUTHORITY: Pub. L. 91-190, 83 Stat. 852, as amended (42 U.S.C. 4321); E.O. 11514; E.O. 11991; 40 CFR 1507.3, 7 CFR 3100.

SOURCE: 45 FR 32313, May 16, 1980, unless otherwise noted.

§ 799.1 Background.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. Section (102)(2) also requires all Federal agencies to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Executive Order 11991 of May 24, 1977 (42 FR 26967), directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500 through 1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. The U.S. Department of Agriculture adopted such procedures in a final rule (7 CFR Part 3100) published on July 30, 1979. The CEQ regulations at 40 CFR 1507.3 (b) identify those items which must be addressed in agency procedures.

§ 799.2 Purpose.

The purpose of this part is to establish agency procedures which supplement NEPA regulations issued by CEQ and USDA. This regulation, together with such NEPA regulations issued by CEQ and USDA, will supersede regulations issued by the Agricultural Stabilization and Conservation Service (ASCS) on December 20, 1974 (39 FR 43996).

§ 799.3 Applicability.

This part, together with NEPA regulations issued by CEQ and USDA, applies to all programs administered by ASCS which might have significant impacts on the environment.

§ 799.4 Definitions.

(a) The term "environmental evaluation" means agency appraisal of the potential or likely environmental impacts of proposed legislation, a new program, a major change in a program, an action related to a program or an action related to part of a program which will be used by the responsible agency official to determine whether or not an environmental assessment and/or an environmental impact statement is needed. Such appraisal shall relate to the same environmental concerns as an environmental impact statement. The environmental evaluation shall particularly focus on the adverse affects of ASCS actions on the environmental factors listed on Form ASCS-929 (see Appendix 2) and on the significance of the action as discussed in the CEQ regulations concerning NEPA at 40 CFR 1508.27. As required, the environmental evaluation shall be made by an interdisciplinary team.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases shall, unless the context or subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, Part 719 of this chapter, as amended.

§ 799.5 ASCS officials and offices responsible for carrying out NEPA.

(a) *Responsible officials.* The Administrator of ASCS, or his or her designee, is the responsible Federal official for carrying out the purpose of NEPA for all ASCS programs. County committees, State committees, and Directors of Washington Divisions, within their respective areas of responsibility with the assistance of the ASCS representative on the USDA Environmental Quality Committee, shall assist the Administrator in complying with the policies and purposes of NEPA generally, and, in particular, in determining whether the quality of the human environment will be significantly affected in implementing agency programs and preparing the necessary environmental documents.

(b) *Offices responsible for carrying out NEPA*—(1) *Washington divisions.* Washington divisions are responsible for carrying out NEPA with regard to legislative proposals and multi-State and national programs or major revisions of national programs.

(2) *State committees.* State committees are responsible for carrying out NEPA with regard to major actions in a State or area within a State.

(3) *County committees.* County committees are responsible for carrying out NEPA with regard to major actions within a county.

(c) All environmental assessments, environmental impact statements (EISs) and similar documents will be forwarded through the appropriate agency channels to the ASCS representative on the USDA Environmental Quality Committee for review and submission to the Administrator.

§ 799.6 Adoption of regulations issued by others in implementing the procedural provisions of NEPA.

In addition to provisions provided for in this Part 799, ASCS adopts the NEPA regulations issued by CEQ (40 CFR Parts 1500 through 1508) and NEPA regulations issued by USDA (7 CFR Part 3100).

§ 799.7 Early involvement in private and state and local activities requiring Federal approval.

(a) The NEPA regulations at 40 CFR 1501.2(d) require agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal involvement.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions ASCS shall:

(1) Prepare, where practicable, generic guidelines describing the scope and level of environmental information required from applicants seeking assistance from ASCS as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(2) Provide such guidance on a project-by-project basis to applicants seeking assistance from ASCS.

(3) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(c) The responsibilities under this section shall be coordinated by the Conservation and Environmental Protection Division of the Agricultural Stabilization and Conservation Service, Washington, D.C.

(d) To facilitate compliance with paragraph (a) of this section, private applicants seeking assistance from ASCS and other non-Federal entities are expected to:

(1) Contact ASCS as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(2) Conduct any studies which are deemed necessary and appropriate by ASCS to determine the impact of the proposed action on the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;

(5) Notify ASCS as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that ASCS may coordinate all Federal environmental reviews; and

(6) Notify ASCS of all known parties potentially affected by or interested in the proposed action.

§ 799.8 Making supplements to EISs part of the final administrative record.

Where ASCS evaluates a proposal on the basis of a formal administrative record and an EIS on the proposal has been prepared, any supplement to the EIS shall be made a part of the formal record before a final decision on the proposal is made.

§ 799.9 Ensuring that environmental factors are considered in agency decisionmaking.

(a) The NEPA regulations at 40 CFR 1501.1 contain requirements to ensure adequate consideration of environmental factors in decisionmaking. To fulfill these requirements, ASCS officials shall:

(1) Consider all relevant environmental factors in evaluating proposals for agency action;

(2) Make all relevant environmental documents, comments and responses part of the record in formal rulemaking or adjudicatory proceedings.

(3) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing review processes;

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for agency action.

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) The four categories of ASCS activities that have or are likely to have significant environment impacts on the human environment are:

(1) Legislative proposals.

(2) Initial program implementation.

(3) Major changes in ongoing programs.

(4) Major environmental concerns with ongoing programs.

(c) Initial NEPA involvement in program categories in paragraph (b) of this section shall begin at the time ASCS begins developing proposed legislation, begins the planning stage for implementing a new or changed program or receives notice that an ongoing program may have a significant adverse impact on the quality of the human environment. Where a legislative EIS or environmental assessment is part of the formal transmittal of a legislative program proposal to Congress, such legislative EIS or assessment may negate the need for the subsequent preparation of a program impact statement when ASCS implements the resulting program. The decision whether such additional statement is needed will be made by an interdisciplinary team. The NEPA process on legislative proposals and ASCS programs is carried out at the national level.

(d) Individual farm participation in ASCS programs will normally not require any major involvement with the NEPA process. The practices carried out under ASCS programs that might have impacts on the quality of the human environment will normally have been discussed in environmental assessments or impact statements on the applicable programs. However, for those practices that might significantly affect the quality of the human environment, the county committee shall make an environmental evaluation before approval. If the environmental evaluation shows that the implementation of a proposed ASCS practice on an individual farm will have significant adverse affects on the quality of the human environment, the county committee will not approve the practice implementation until after the completion of the NEPA-EIS process in accordance with this Part. For those actions for which technical assistance is provided by an agency other than ASCS, and such technical agency is required by its regulations to implement NEPA requirements when providing such assistance, the county committee shall use the environmental determination and considerations of such agency instead of duplicating the NEPA-EIS process. Individual farm participation in acreage set-aside, acreage allotments, price support and loans and other similar or related programs will not significantly affect the quality of the human environment.

(e) Pooling agreements and special projects carried out under several ASCS programs involving two or more farmers in a local geographic area will not normally require any major involvement with the NEPA process. However, the county committee shall, with the assistance of a local interdisciplinary team, as necessary, make an environmental evaluation of proposed pooling agreements or special projects that have a potential for significantly affecting the quality of the human environment. The NEPA process shall begin with the initial involvement of ASCS personnel in the planning or development of pooling agreements or special projects. If it is determined from an environmental evaluation that the implementation of a proposed pooling agreement or a proposed special project will have a significant adverse impact on the quality of the human environment, the completion of the NEPA-EIS process in accordance with these regulations will be necessary before approval. For those actions for which technical assistance is provided by an agency other than ASCS and such technical agency is required by its regulations to implement NEPA when providing such assistance the county committee shall use the environmental determinations and considerations of such agency instead of duplicating the NEPA-EIS process.

§ 799.10 Criteria and identification of ASCS actions as to degree of involvement under the NEPA process.

(a) ASCS will for each of its legislative proposals, initial program implementations, program changes or any actions under its ongoing programs make a determination by the use of an environmental evaluation as to whether or not an environmental assessment or EIS is required.

(b) The NEPA regulations issued by CEQ at 40 CFR 1507.3(b)(2) in conjunction with the regulations at 40 CFR 1508.4 require agencies to determine those typical classes of actions for treatment under NEPA. The typical classes of ASCS actions for treatment under NEPA are set forth as follows:

(1) Actions normally requiring an EIS are:

(i) Production adjustment programs to balance supply and demand of specified commodities, through cropland set-aside or other acreage diversion.

(ii) Agricultural Conservation Program.

(iii) Rural Clean Water Program.

(iv) Other major actions that are determined after an environmental evaluation and/or an environmental assessment to significantly affect the quality of the human environment.

(2) Actions normally not requiring an assessment or an EIS are:

(i) Individual farm participation in ASCS programs.

(ii) Pooling agreements and special projects under ASCS programs.

(iii) Production adjustment programs for tobacco, peanuts and extra long staple cotton.

(iv) Emergency Conservation Program.

(v) Water Bank Program.

(vi) Forestry Incentives Program.

(vii) Sugar Program.

(viii) Wool and Mohair Incentives Program.

(ix) Bee and Dairy Indemnity Programs.

(x) Commodity Income and Support and Disaster Protection Programs.

(xi) Facility Loan Program.

(xii) Grain Reserve Program.

(xiii) Livestock Feed Program.

(xiv) Naval Stores Program.

(xv) Indian Acute Distress Donation Program.

(xvi) Other major actions that are determined after an environmental evaluation not to significantly affect the quality of the human environment.

(c) ASCS will independently determine by an environmental evaluation whether an environmental assessment or an EIS is required on actions included in paragraph (b) of this section where the presence of extraordinary circumstances or other unforseeable factors indicate that some other level of environmental review may be appropriate.

(d) If an environmental evaluation indicates that an action will significantly affect the quality of the human environment, the preparation of an environmental assessment and/or an EIS will be necessary before the action is carried out.

§ 799.11 Expedited procedures.

Where emergency circumstances make it necessary to take action with significant environmental impact without following the provisions of the NEPA regulations issued by CEQ, USDA, and ASCS, ASCS will, by working through the USDA Office of Environmental Quality, consult with CEQ and/or EPA about alternative arrangements (7 CFR 3100.35).

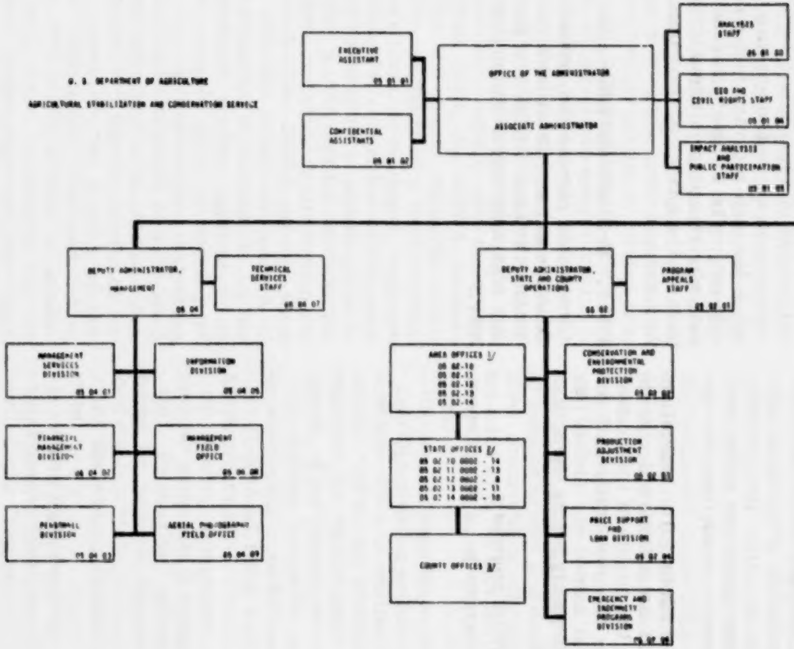
§ 799.12 Program termination.

An environmental assessment or an EIS will not be needed when a program or part of a program is discontinued because of a mandatory legislative requirement where the enabling legislation for such program does not provide authority to ameliorate or mitigate any resulting environmental effects on the quality of the human environment.

§ 799.13 Environmental information.

Interested persons may contact the Conservation and Environmental Protection Division, ASCS, for information regarding ASCS compliance with NEPA.

Appendix 1


U. S. DEPARTMENT OF AGRICULTURE

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

EXECUTIVE ASSISTANT 05 01 01
CONFIDENTIAL ASSISTANTS 05 01 02
OFFICE OF THE ADMINISTRATOR
ASSOCIATE ADMINISTRATOR
ANALYSIS STAFF 05 01 03
EEO AND CIVIL RIGHTS STAFF 05 01 04
IMPACT ANALYSIS AND PUBLIC PARTICIPATION STAFF 05 01 05
DEPUTY ADMINISTRATOR, MANAGEMENT 05 04
TECHNICAL SERVICES STAFF 05 04 07
MANAGEMENT SERVICES DIVISION 05 04 01
INFORMATION DIVISION 05 04 05
FINANCIAL MANAGEMENT DIVISION 05 04 02
MANAGEMENT FIELD OFFICE 05 04 08
PERSONNEL DIVISION 05 04 03
AERIAL PHOTOGRAPHY FIELD OFFICE 05 04 09
DEPUTY ADMINISTRATOR, STATE AND COUNTY OPERATIONS 05 02
PROGRAM APPEALS STAFF 05 02 01
AREA OFFICES 1/
05 02-10
05 02-11
05 02-12
05 02-13
05 02-14
STATE OFFICES 2/
05 02 10 0000 - 14
05 02 11 0000 - 13
05 02 12 0000 - 8
05 02 13 0000 - 11
05 02 14 0000 - 10
COUNTY OFFICES 3/
CONSERVATION AND ENVIRONMENTAL PROTECTION DIVISION 05 02 02
PRODUCTION ADJUSTMENT DIVISION 05 02 03
PRICE SUPPORT AND LOAN DIVISION 05 02 04
EMERGENCY AND INDEMNITY PROGRAMS DIVISION 05 02 05
DEPUTY ADMINISTRATOR, COMMODITY OPERATIONS 05 03
INVENTORY MANAGEMENT DIVISION 05 03 03
PROCUREMENT AND SALES DIVISION 05 03 02
PRODUCER ASSOCIATIONS DIVISION 05 03 05
KANSAS CITY COMMODITY OFFICE 05 03 04
MINNEAPOLIS BRANCH OFFICE 05 03 04 0014
HOUSTON BRANCH OFFICE 05 03 04 0010
PORTLAND BRANCH OFFICE 05 03 04 0013

RECOMMENDED: Ray Fitzgerald
ADMINISTRATOR

CONCURRED:
ACTING UNDER SECRETARY FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS

APPROVED: Joan S. Wallace
ASSISTANT SECRETARY FOR ADMINISTRATION

DATE: MAR 2 8 1979

ADMINISTERS SPECIFIED COMMODITY AND RELATED LAND USE PROGRAMS DESIGNED FOR PRODUCTION ADJUSTMENT, RESOURCE PROTECTION, AND PRICE, MARKET, AND FARM INCOME STABILIZATION

1/ 5 AREAS
2/ OFFICE IN EACH STATE AND PUERTO RICO
3/ OFFICES IN AGRICULTURAL COUNTIES

PREPARED BY:
PERSONNEL DIVISION
SUPERSEDES ASCS CHART DATED OCTOBER 31, 1978

ASCS-929
(6-11-78)

U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

APPENDIX 2

MATRIX OF ENVIRONMENTAL RELATIONSHIPS

ENVIRONMENTAL FACTORS	POTENTIAL ALTERNATIVES				
	FUTURE WITHOUT PROGRAM	PROPOSED PROGRAM	1/	1/	1/
Land Cover					
Soil Erosion					
Loss of Prime Cropland					
Water Quantity					
Water Quality					
Ground-Water Quality					
Air Quality					
Odor					
Noise					
Radiation					
Energy Supply					
Pesticides					
Fertilizers					
Woodland Production					
Wildlife Habitat					
Fish Production					
Recreation					
Timber Production					
Wetlands					
Natural Streams					
Service Industries					
Economic					
Population Migration					
Social Values					
Unique					
Archaeological					
Historical					
Natural					
Endangered Species					
Landscape					

REMARKS

Relationship of Impacts Toward the Environment - + Slight; ++ Moderate; +++ Important. 1/ List alternative to proposed program.

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AUTHORITY: 39 Stat. 482, as amended; Pub. L. 90-487, 82 Stat. 761; Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 *et seq.*), unless otherwise noted.

SOURCE: 45 FR 15810, Mar. 11, 1980, unless otherwise noted.

EDITORIAL NOTE: An emergency regulation affecting Part 800 appears at 44 FR 70425, Oct. 23, 1980.

DEFINITIONS

§ 800.0 Meaning of terms.

(a) *Construction.* Words used in the singular form shall be considered to imply the plural and vice versa, as appropriate. When a section; e.g., § 800.2, is cited, it refers to the indicated section in these regulations.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms shall have the meanings given for them below. The terms defined in the Act have been incorporated herein for easy reference.

(1) *Act.* The United States Grain Standards Act, as amended (39 Stat. 482-485, as amended 7 U.S.C. 71 *et seq.*).

(2) *Administrator.* The Administrator of the Federal Grain Inspection Service or any person to whom authority has been delegated.[1]

(3) *Agency.* A delegated State or an official agency designated by the Administrator, as appropriate.

(4) *Appeal inspection service.* An official review by a field office of the results of an original inspection service or a reinspection service.

(5) *Applicant.* An interested person who requests an official inspection or a Class X or Class Y weighing service.

(6) *Approved scale testing organization.* A State or local governmental agency, or person, approved by the Service to perform official equipment testing services with respect to weighing equipment.

(7) *Approved weigher.* A person employed by or at an approved weighing facility and approved by the Service to physically perform Class X or Class Y weighing services, and certify the results of Class Y weighing.

(8) *Approved weighing equipment.* Any weighing device or related equipment approved by the Service for the performance of Class X or Class Y weighing services.

(9) *Approved weighing facility.* An elevator that is approved by the Service to receive Class X or Class Y weighing services.

(10) *Assigned area of responsibility.* A geographical area assigned to an agency or to a field office for the performance of official inspection or Class X or Class Y weighing services.

(11) *Board appeal inspection service.* An official review by the Board of Appeals and Review of the results on an appeal inspection service.

(12) *Board of Appeals and Review.* The Board of Appeals and Review of the Service.

(13) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by an agency.

(14) *Cargo shipment.* Bulk or sacked grain that is loaded directly aboard waterborne carrier for shipment. Grain loaded aboard a land carrier for shipment aboard a waterborne carrier shall not be considered to be a cargo shipment.

(15) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk or sacked grain.

(16) *Chapter.* Chapter VIII of the Code of Federal Regulations (7 CFR Chapter VIII).

(17) *Circuit.* A geographical area assigned to a field office.

(18) *Class X or Class Y weighing equipment testing.* Any operation or procedure performed by official personnel to determine the accuracy of the equipment used, or to be used, in the performance of Class X or Class Y weighing services.

(19) *Combined lot.* Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as one lot.

(20) *Compliance.* Conformance with all requirements and procedures established by statute, regulation, instruction, or directive so that managerial, administrative, and technical functions are accomplished effectively. Compliance functions include: evaluating alleged violations, initiating preliminary investigations; initiating implementation of all necessary corrective actions; conducting management and technical reviews; administering the designation of agencies and the

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[1] A definition taken from the U.S. Grain Standards Act, as amended, with certain modifications which do not change the meanings.

delegation of State agencies to perform official functions; identifying and, where appropriate, waiving and monitoring conflicts of interest; licensing agency personnel; responding to audits of FGIS programs; and reviewing and, when appropriate, approving agency fee schedules.

(21) *Container.* A carrier, or a bin, other storage space, bag, box, or other receptacle for grain.

(22) *Contract grade.* The official grade, official factors, or official criteria specified in a contract for sale or confirmation of sale; or in the absence of a contract the official grade, official factors, or official criteria specified by the applicant for official service.

(23) *Contract service.* An inspection or weighing service performed under a contract between an applicant and the Service.

(24) *Contractor.* A person who enters into a contract with the Service for the performance of specified official inspection or official monitoring services.

(25) *Date of official inspection service or Class X or Class Y weighing services.* The day on which an official inspection, or a Class X or Class Y weighing service is completed. For certification purposes, a day shall be considered to end at midnight, local time.

(26) *Deceptive loading, handling, weighing, or sampling.* Any manner of loading, handling, weighing, or sampling that knowingly deceives or attempts to deceive official personnel.[1]

(27) *Delegated State.* A State agency delegated authority under the Act to provide official inspection service, or Class X or Class Y weighing services, or both, at one or more export port locations in the State.

(28) *Department of Agriculture and Department.* The United States Department of Agriculture (USDA).[1]

(29) *Designated agency.* A State or local governmental agency, or person, designated under the Act to provide either official inspection service, or Class X or Class Y weighing services, or both, at locations other than export port locations.

(30) *Door-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain only in the vicinity of the tailgate of the truck or trailer, the door of the railroad boxcar, or in a similarly restricted opening or area in the carrier in which the grain is located or is loaded in hopper cars or barges in such a manner that a representative sample cannot be obtained.

(31) *Elevator.* Any warehouse, storage, or handling facility used primarily for receiving, storing, or shipping grain. In a facility that is used primarily for receiving, storing, and shipping grain, all parts of the main facility, as well as annexes, shall be considered to be part of the elevator. A warehouse, storage, and handling facility that is located adjacent to and is operated primarily as an adjunct of a grain processing facility shall not be considered to be an elevator.

(32) *Elevator areas and facilities.* All operational areas, including the automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the headhouse and control rooms; all storage areas, including the bins, the interstices, the bin floor, and the basement; and all handling facilities, including the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

(33) *Employed.* An individual is employed if the individual is actually employed or the employment is being withheld pending issuance of a license under the Act.

(34) *Exporter.* Any person who ships or causes to be shipped any bulk or sacked grain in a final carrier or container in which the grain is transported from the United States to any place outside the United States.

(35) *Export elevator.* Any grain elevator, warehouse, or other storage or handling facility in the United States (i) from which bulk or sacked export grain is loaded (A) aboard a carrier in which the grain is shipped from the United States to any place outside thereof, or (B) into a container for shipment to an export port location where the grain and the container will be loaded aboard a carrier in which it will be shipped from the United States to any place outside thereof; and (ii)

which has been approved by the Service as a facility where Class X or Class Y weighing of grain may be obtained.[1]

(36) *Export grain.* Grain for shipment from the United States to any place outside thereof.[1]

(37) *Export port location.* A commonly recognized port of export in the United States or Canada, as determined by the Administrator, from which grain produced in the United States is shipped to any place outside the United States. Such locations include any coastal or border location or site in the United States which contains one or more export elevators, and is identified by the Service as an export port location.[1]

(38) *False, incorrect, and misleading.* Respectively false, incorrect, and misleading in any particular.[1]

(39) *Federal Register.* An official U.S. Government publication issued under the Federal Register Act of July 26, 1935, as amended (44 U.S.C. 301 *et seq.*).

(40) *Field Office.* An office of the Service designated to perform or supervise official inspection services and Class X and Class Y weighing services.

(41) *Grain.* Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, triticale, mixed grain, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 of the Act.[1]

(42) *Handling.* Loading, unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, or fumigating grain.

(43) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order. Under section 610 and Executive Order No. 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(44) *"IN" movement.* A movement of grain into an elevator, or into or through a city, town, port, or other location without a loss of identity.

(45) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(46) *Interested person.* Any person having a contract or other financial interest in grain as the owner, seller, purchaser, warehouseman, or carrier, or otherwise.[1]

(47) *Interstate or foreign commerce.* Commerce from any State to or through any other State, or to or through any foreign country.[1]

(48) *Licensee.* Any person licensed by the Service.

(49) *Loading.* Placing grain in or aboard any carrier or container.

(50) *"LOCAL" movement.* A bin run or other inhouse movement, or grain in bins, tanks, or similar containers which are not in transit or designed to transport grain.

(51) [Reserved]

(52) *Lot.* A specific quantity of grain identified as such.[1]

(53) *Material error.* An error in the results of an official inspection service that exceeds the official tolerance, or any error in the results of a Class X or Class Y weighing service.

(54) *Material portion.* A portion of a lot which, in accordance with the inspection plans prescribed in the instructions, is considered inferior to the contract or declared grade.

(55) *Merchandiser.* Any person, other than a producer, who buys and sells grain and takes title to the grain. A person who operates as a broker or commission agent and does not take title to the grain shall not be considered to be a merchandiser.

(56) *Monitoring.* Observing or reviewing activities performed under or subject to the Act for adherence to the Act, the regulations, standards, and instructions and preparing reports thereon.

(57) *Nonregular workday.* Any Sunday or holiday.

(58) *Official agency.* Any State or local government agency, or any person, designated by the Administrator pursuant to subsection (f) of section 7 of the Act for the conduct of official inspection (other than appeal inspection), or subsection (c) of section 7A of the Act for the conduct of Class X or Class Y weighing (other than review of weighing).[1]

(59) *Official certificate.* Those certificates which show the results of official services performed under the Act as provided in the instructions, and any other official certificates which may be approved by the Service in accordance with the instructions.

(60) *Official criteria.* A quantified physical or chemical property of grain that is approved by the Service to determine the quality or condition of grain or other facts relating to grain.

(61) *Official factor.* A quantified physical or chemical property of grain as identified in the Official U.S. Standards for Grain.

(62) *Official forms.* License, authorizations, and approvals; official certificates; official pan tickets; official inspection or weighing logs; weight sheets; shipping bin weight loading logs; official equipment testing reports; official certificates of registration; and any other forms which may be issued or approved by the Service that show the name of the Service or an agency and a form number.

(63) *Official grade designation.* A numerical or sample grade designation, specified in the standards relating to kind, class, quality, and condition of grain provided for in the Act.[1]

(64) *Official inspection.* The determination (by original inspection, and when requested, reinspection and appeal inspection) and the certification, by official personnel, of the kind, class, quality, or condition of grain, under standards provided for in the Act; or the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality of such grain; or other facts relating to grain under other criteria approved by the Administrator (the term "officially inspected" shall be construed accordingly).[1]

(65) *Official inspection equipment testing.* Any operation or procedure by official personnel to determine the accuracy of equipment used, or to be used, in the performance of official inspection services.

(66) *Official inspection technician.* Any official personnel who perform or supervise the performance of specified official inspection services and certify the results thereof, other than certifying the grade of the grain.

(67) *Official inspector.* Any official personnel who perform or supervise the performance of official inspection services and certify the results thereof including the grade of the grain.

(68) *Official marks.* The symbols or terms "official certificate," "official grade," "officially sampled," "officially inspected," "official inspection," "U.S. inspected," "loaded under continuous official inspection," "official weighing," "officially weighed," "official weight," "official supervision of weighing," "supervision of weighing," "officially supervised weight," "loaded under continiuous official weighing," "loaded under continuous official inspection and weighing," "officially tested," "Class X weight," "official Class X weighing," "Class X weighing," "official Class Y weighing," "Class Y weighing," and "Class Y weight."

(69) *Official personnel.* Persons licensed or otherwise authorized by the Administrator pursuant to Section 8 of the Act to perform all or specified functions involved in official inspection, Class X or Class Y weighing, or in the supervision of official inspection, or Class X or Class Y weighing.[2]

(70) *Official sample.* A sample obtained from a lot of grain by, and submitted for official inspection by, official personnel (the term "official sampling" shall be construed accordingly).[1]

(71) *Official sampler.* Any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(72) *Official stowage examination.* Any examining operation or procedure performed by official personnel to determine the suitability of a carrier or container to receive or store grain.

(73) *Official tolerance.* A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising the performance of official inspection

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[2] This definition is the same as the definition for "Official inspection personnel" found at Section 3 of the Act. Warehouseman's samplers are not considered official personnel but they are licensed under authority of Section 11 of the Act.

services, official equipment testing services, and, when determined under an established loading plan, reinspection services and appeal inspection services.

(74) *Official U.S. Standards for Grain.* The Official U.S. Standards for Grain established under the Act describe the physical and biological condition of grain at the time of inspection.

(75) *Official weigher.* Any official personnel who perform or supervise the performance of Class X or Class Y weighing services and certify the results thereof, including the weight of the grain.

(76) *Official weighing.* (Referred to as Class X weighing.) The determination and certification by official personnel of the quantity of a lot of grain under standards provided for in the Act, based on the actual performance of weighing or the physical supervision thereof, including the physical inspection and testing for accuracy of the weights and scales and the physical inspection of the premises at which weighing is performed and the monitoring of the discharge of grain into the elevator or conveyance. (The terms "officially weigh" and "officially weighed" shall be construed accordingly.)[1]

(77) *Official weighing technician.* Any personnel who perform or supervise specified weighing services and certify the results thereof other than certifying the weight of grain.

(78) *Official weight sample.* Sacks of grain obtained at random by, or under the complete supervision of, official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot.

(79) *Original inspection.* An initial official inspection of grain.

(80) *"Out" movement.* A movement of grain out of an elevator or out of a city, town, port, or other location.

(81) *Person.* Any individual, partnership, corporation, association, or other business entity.[1]

(82) *Quantity.* Pounds or kilograms, tons or metric tons, or bushels.

(83) *Reasonably continuous operation.* A loading or unloading operation in one specific location which does not include inactive intervals in excess of 88 consecutive hours.

(84) *Regular workday.* Any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday that is not a holiday.

(85) *Regulations.* The regulations in Parts 800, 801, and 802 of this chapter.

(86) *Reinspection service.* An official review of the results of an original inspection service by the agency or field office that performed the original inspection service.

(87) *Respondent.* The party proceeded against.

(88) *Review of weighing service.* An official review of the results of a Class X or Class Y weighing service.

(89) *Secretary.* The Secretary of Agriculture of the United States or any person to whom authority has been delegated.

(90) *Service.* The Federal Grain Inspection Service of the United States Department of Agriculture (FGIS).[1]

(91) *Service representative.* An authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(92) *Shallow-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions.

(93) *Ship.* The verb "ship" with respect to grain means transfer physical possession of the grain to another person for the purpose of transportation by any means of conveyance, or transport one's own grain by any means of conveyance.[1]

(94) *Shiplot grain.* Grain loaded aboard, or being loaded aboard, or discharged from an ocean-going vessel including a barge, lake vessel, or other vessel of similar capacity.

(95) *Shipper's Export Declaration.* The Shipper's Export Declaration certificate filed with the U.S. Department of Commerce, Bureau of Census.

(96) *Specified service point.* A city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y

weighing services and within which the agency or one or more of its inspectors or weighers is located.

(97) *Standardization.* The act, process, or result of standardizing methodology and measurement of quality and quantity. Standardization functions include: compiling and evaluating data to develop and to update grading and weighing standards, developing or evaluating new methodology for determining grain quality and quantity, providing reference standards for official grading methods, and reviewing official results through the use of a quality control and weight monitoring program.

(98) *State.* Any one of the States (including Puerto Rico) or territories or possessions of the United States (including the District of Columbia).[1]

(99) *Submitted sample.* A sample submitted by or for an interested person for official inspection, other than an official sample.[1]

(100) *Supervision.* The effective guidance of agencies, official personnel and others who perform activities under the Act, so as to reasonably assure the integrity and accuracy of the program activities. Supervision includes overseeing, directing, and coordinating the performance of activities under the Act, reviewing the performance of these activities; and effecting appropriate action. FGIS supervisory personnel supervise agencies, official personnel and others who perform activities under the Act. Agency supervisors are responsible for the direct supervision of their own official personnel and employees. FGIS provides oversight, guidance, and assistance to agencies as they carry out their responsibilities.

(101) *Supervision of weighing* (Referred to as Class Y weighing.) Such supervision by official personnel of the grain-weighing process as is determined by the Administrator to be adequate to reasonably assure the integrity and accuracy of the weighing and of certificates which set forth the weight of the grain and such physical inspection by such personnel of the premises at which the grain weighing is performed as will reasonably assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance.[1]

(102) *United States.* The States (including Puerto Rico) and the territories and possessions of the United States (including the District of Columbia).[1]

(103) *Use of official inspection service.* The use of the services provided under a delegation or designation or provided by the Service.

(104) *Uniform in quality.* A lot of grain in which there are no material portions.

(105) *Warehouseman's sampler.* An elevator employee licensed by the Service to obtain samples of grain for a warehouseman's sample-lot inspection service. Warehouseman's samplers are not considered official personnel, but they are licensed under authority of section 11 of the Act.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36068, Sept. 14, 1984; 49 FR 37055, Sept. 21, 1984; 49 FR 49586, Dec. 21, 1984]

ADMINISTRATION

§ 800.1 Mission.

The mission of the Federal Grain Inspection Service is to provide for the establishment of official United States Standards for Grain, to promote the uniform application thereof by official inspection personnel, to provide for an official inspection system for grain, and to regulate the weighing and the certification of the weight of grain shipped in interstate or foreign commerce, as authorized by the U.S. Grain Standards Act, as amended, and the regulations thereof; and to carry out the delegated responsibilities under the Atricultural Marketing Act of 1946.

(Secs. 2, 4, 18, Pub. L. 94-582, 90 Stat. 2867, 2868; (7 U.S.C. 74, 75a, 87e) and sec. 1604, Pub. L. 95-113, 91 Stat. 1026; (7 U.S.C. 75a))

[49 FR 28539, July 13, 1984]

§ 800.2 Administrator.

The Administrator is responsible for the administration of the Act and, pursuant to section 3A of the Act, the delegated responsibilities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Administrator is responsible for the establishment of policies, guidelines, and regulations by which the Service is to carry out the provisions of the Act and the Agricultural Marketing Act of 1946. The regulations promulgated under the Agricultural Marketing Act of 1946 appear at Part 68 of this title (7 CFR Part 68). The Administrator is authorized to take any action required by law or considered to be necessary and proper to the discharge of the functions and services under the Act and the Agricultural Marketing Act of 1946. The Administrator may delegate authority to the Deputy Administrators, Division Directors, and other appropriate officers and employees. The Administrator may, in emergencies or other circumstances which would not impair the objectives of the Act, suspend for a period determined by the Administrator any provision of the regulations or official grain standards. The Administrator may authorize research; experimentation; and the testing of new procedures, equipment, and handling techniques to improve the inspection and weighing of grain. The Administrator may waive the official inspection and official weighing requirements pursuant to section 5 of the Act.

[49 FR 49587, Dec. 21, 1984]

§ 800.3 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*), (Pub. L. 88-352).

§ 800.4 Procedures for establishing regulations, official standards, and official criteria.

Notice of proposals to prescribe, amend, or revoke regulations, official standards, and official criteria under the Act shall be published in accordance with applicable provisions of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). Proposals to establish, amend, or revoke grain standards will be made effective not less than 1 calendar year after promulgation unless, for good cause, the Service determines that the public health, interest, or safety require that they become effective sooner. Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations, Official U.S. Standards for Grain, or official criteria may do so in accordance with § 1.28 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.28).

§ 800.5 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should be filed with the Service in accordance with §1.133 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.133) and with the regulations and the instructions.

(b) *Reinspection, review of weighing, and appeal services.* Complaints involving the results of official inspection or Class X or Class Y weighing services shall, to the extent practicable, be submitted as requests for a reinspection service, a review of weighing service, an appeal inspection service, or a Board appeal inspection service as set forth in these regulations.

(c) *Foreign buyer complaints.* Inquiries or complaints from importers or other purchasers in foreign countries involving alleged discrepancies in the quality or weight of officially inspected or Class X weighed export grain shall, to the extent possible, be submitted by the importers or purchasers to the appropriate U.S. Agricultural Attache in accordance with § 2.68(a)(15) of the regulations of the Office of the Secretary of Agriculture (7 CFR 2.68(a)(15)) and the instructions issued by the Foreign Agricultural Service of the Department.

§ 800.6 Provisions for hearings.

Opportunities will be provided for hearings prescribed or authorized by sections 7(g)(3), 7A(c)(2), 9, 10(d), and 17A(d) of the Act, and the hearings shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H).

§ 800.7 Information about the Service, Act, and regulations.

Information about the Service, Act, regulations, official standards, official criteria, rules of practice, instructions, and other matters related to the official inspection or Class X or Class Y weighing of grain may be obtained by telephoning or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, at 14th Street and Independence Avenue, SW., Washington, D.C. 20250, or any field office or agency.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884; (7 U.S.C. 76, 87e))

[48 FR 57467, Dec. 30, 1983]

§ 800.8 Public information.

(a) *General.* This section is issued in accordance with §§ 1.1 through 1.16 of the regulations of the Secretary of Agriculture in Part 1, Subpart A, of Subtitle A of Title 7 (7 CFR 1.1 through 1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.2(a), will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Federal Grain Inspection Service, at 14th Street and Independence Avenue, SW., Washington, D.C. 20250. The public may request access to these materials during regular working hours, 8:00 a.m.—4:30 p.m. Monday through Friday except for holidays.

(c) *Indexes.* FGIS shall maintain an index of all material required to be made available in 7 CFR 1.2(a). Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable, because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and shall be addressed as follows: Office of the Administrator, Federal Grain Inspection Service, FOIA Request, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW. Washington, D.C. 20250.

(e) *Appeals.* Any person whose request, under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.3(e). Appeals shall be addressed to the Administrator, Federal Grain Inspection Service, FOIA Appeal, U.S. Department of Agriculture, Washington, D.C. 20250.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884; (7 U.S.C. 76, 87e))

[48 FR 57467, Dec. 30, 1983]

OFFICIAL INSPECTION AND CLASS X OR CLASS Y WEIGHING REQUIREMENTS

§ 800.15 Services.

(a) *General.* These regulations implement requirements for a national inspection and weighing system. This system promotes the uniform and accurate application of the official grain standards and provides inspection and weighing services required by the Act and as requested by applicants for official services. The types and kinds of services available under the Act and regulations can be obtained at all specified service points in the United States and on U.S. grain in Canadian ports.

(b) *Responsibilities for complying with official inspection and weighing requirements*—(1) *Export grain.* Exporters are responsible for complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the Act and the regulations applicable to export grain.

(2) *Intercompany barges.* Operators of export elevators at export port locations are responsible for complying with Class X weighing requirements and regulations covering intercom-

pany grain shipments received by barge.

(3) *Grain in marked containers.* When grain is in a container that bears an official grade designation or mark, the person who places the designation or mark on the container or the person who places the grain in a container that bears the designation or mark shall be responsible for determining that the grain has been inspected or weighed by official personnel and qualifies for the official grade designation or mark.

(4) *Grain for which representations have been made.* Any person who makes a representation that (i) grain has been officially inspected or weighed; or (ii) grain has been officially inspected or weighed and found to be of a particular kind, class, quality, condition, or weight; or (iii) particular facts have been established with respect to the grain by official inspection or weighing, shall be responsible for determining that the representation is true and is not in violation of the Act and regulations.

[50 FR 49668, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49668, Dec. 4, 1985, § 800.15 was revised, effective January 3, 1986. For the convenience of the user the superseded text appears as follows:

§ 800.15 Services.

(a) *General.* The regulations in this chapter provide for a national inspection and weighing system for grain. The purpose of the system is to promote the uniform and accurate application of the official grain standards and to provide inspection and weighing services which may be required by the Act or desired by the grain industry, with the objective that U.S. grain may be marketed in an orderly and timely manner and that trading in grain may be facilitated. The types and kinds of inspection and weighing services identified in the regulations shall, insofar as practicable, be available under the Act and the regulations at all specified service points in the United States and on U.S. grain in Canadian ports.

(b) *Responsibility for complying with the official inspection and Class X or Class Y weighing requirements.*—(1) *Export grain.* The exporter of grain shall be responsible for complying with all official inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the Act and the regulations applicable to export grain.

(2) *Intercompany barge receipts.* The person who operates an export elevator at an export port location shall be responsible for complying with the Class X weighing requirements and regulations with respect to all intercompany grain shipments received by barge.

(3) *Grain in marked containers.* In the case of grain in a container that bears an official grade designation or an official mark, the person who places the designation or mark on the container or the person who places the grain in a container that bears an official grade designation or an official mark shall be responsible for determining that the grain in the containers has been officially inspected or Class X or Class Y weighed and has been found to qualify for the designation or mark.

(4) *Grain for which representations have been made.* Any person who makes a representation that: (i) Any grain has been officially inspected or Class X or Class Y weighed; or (ii) any grain has been officially inspected or Class X or Class Y weighed and found to be of a particular kind, class, quality, condition, or weight; or (iii) particular facts have been established with respect to the grain by official inspection or Class X or Class Y weighing, shall be responsible for determining that the representation is true and is not a violation of the Act or regulations.

(Secs. 9, 18, Pub. L. 94-582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e))

[45 FR 15810, Mar. 11, 1980, as amended at 46 FR 30323, June 5, 1981]

§ 800.16 Certification requirements for export grain.

(a) *General.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain shall be issued according to § 800.162 for export grain loaded by an export elevator. Only these types of export certificates showing the official grade and/or the Class X weight of the grain shall be considered to be in compliance with the inspection and/or weighing requirements under the Act for export grain.

(b) *Promptly furnished.* Export certificates shall be considered promptly furnished if they are forwarded by the shipper or the shipper's agent to the consignee not later than 10 business days after issuance.

[50 FR 49668, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49668, Dec. 4, 1985, § 800.17 was redesignated as § 800.16 and revised, effective January 3, 1986. For the convenience of the user the superseded text appears as follows:

§ 800.17 Certification requirements for export grain.

(a) *Restriction.* Only Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain will be issued for export grain loaded by an export elevator.

(b) *Evidence of compliance.* (1) *Inspection.* Only a valid Official Export Grain Inspection and Weight Certificate or a valid Official Export Grain Inspection Certificate which shows the official grade of the grain and otherwise complies with the provisions of § 800.162 shall be considered to be in compliance with the official inspection requirements for export grain.

(2) *Weighing.* Only a valid Official Export Grain Inspection and Weight Certificate or a valid Official Export Grain Weight Certificate which shows the Class X weight of the grain and otherwise complies with the provisions of § 800.161 shall be considered to be in compliance with the Class X weighing requirements for export grain.

(c) *Promptly furnished.* An Official Export Grain Inspection and Weight Certificate, an Official Export Grain Inspection Certificate, or an Official Export Grain Weight Certificate shall be considered to have been promptly furnished if it is forwarded by the shipper or the shipper's agent to the consignee not later than 10 business days after issuance.

§ 800.17 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of § 800.18, sacked export grain shall be (1) officially inspected on the basis of official samples obtained with an approved sampling device and operated in accordance with instructions, (2) Class X weighed or checkweighed, and (3) officially checkloaded by official personnel at the time the grain is loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Services at time of loading.* When official sampling, official inspection, Class X weighing or checkweighing, and checkloading of sacked export grain loaded aboard an export carrier is performed at one location and time, official export inspection and weight certificate(s) which identify the export carrier shall be issued.

(c) *Services prior to loading.* When official sampling, official inspection, and Class X weighing or checkweighing of sacked export grain is performed prior to the date of loading aboard an export carrier, official "OUT" certificates shall be issued. An examination by official personnel for condition and checkloading of the grain shall be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading shows that the identity or quantity of the grain has not changed or the condition of the grain has not changed beyond expected variations prescribed in the instruction, official export inspection and weight certificates shall be issued on the basis of the official "OUT" certificates and the checkloading. If the identity, quantity, or the condition has changed, official export inspection and weight certificates shall be issued on the basis of the most representative samples, including weight samples, obtained at the time the grain is loaded aboard the export carrier.

[50 FR 49668, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49668, Dec. 4, 1985, § 800.18 was redesignated as § 800.17 and revised, effective January 3, 1986. For the convenience of the user the superseded text appears as follows:

§ 800.18 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of § 800.19, sacked export grain shall be (1) officially inspected based on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions, (2) Class X weighed or checkweighed, and (3) officially checkloaded at the time the grain is being loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Services at time of loading.* If the official sampling, official inspection, Class X weighing or checkweighing, loading, and official checkloading of sacked export grain aboard an export carrier are performed at one location and time, official export inspection and weight certificate(s) which identify the export carrier shall be issued.

(c) *Services prior to loading.* If the official sampling, official inspection, and Class X weighing or checkweighing of sacked export grain are performed prior to the date of the loading and official checkloading of the grain aboard an export carrier, an official "OUT" inspection certificate and an official weighing certificate shall be issued. An official examination for condition and an official checkloading of the grain must then be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading show that the identity or quantity of the grain has not changed or the condition of the grain has not changed beyond expected variations prescribed in the instructions, an official export inspection certificate and an official export weight certificate shall be issued on the basis of the "OUT" inspection certificate, the weighing certificate, and the checkloading. If the identity, quantity, or the condition of the grain has changed, an official export inspection certificate and an official export weight certificate shall be issued on the basis of the most representative samples, including weight samples, obtained at the time the grain is loaded aboard the export carrier.

(Sec. 18, Pub. L. 94-582, 90 Stat. 2884 (7 U.S.C. 87e)).

[45 FR 15810, Mar. 11, 1980, as amended at 47 FR 54057, Dec. 1, 1982]

§ 800.18 Waivers of the official inspection and Class X weighing requirements.

(a) *General.* Wavers from the official inspection and Class X weighing requirements for export grain under section 5 of the Act shall be provided in accordance with this section and the Act.

(b) *Waivers*—(1) *15,000 metric-ton waiver.* Official inspection and Class X weighing requirements apply only to exporters and individual elevator operators who (i) exported 15,000 metric tons or more of grain during the preceding calendar year, or (ii) have exported 15,000 metric tons or more of grain during the current calendar year. Exporters and elevator operators who are granted a waiver by reason of this paragraph shall, as a condition of the waiver, keep such accounts, records, and memorandum to fully and correctly disclose all transactions concerning lots of all export grain shipments. In addition, the exporters or elevator operators shall notify the Service in writing of the intention to export grain under this waiver. In the case of lots waived under this provision, if such lots are required by contract to be inspected or weighed, or if the lots are represented by official inspection or weight certificates, then such certificates shall meet the requirements of section 5 of the Act.

(2) *Grain exported for seeding purposes.* Official inspection and Class X weighing requirements do not apply to grain exported for seeding purposes, provided that (i) the grain is (A) sold or consigned for sale and invoiced as seed; and (B) identified as seed for seeding purposes on the Shipper's Export Declaration; and (ii) records pertaining to these shipments are made available, upon request by the Service, for review or copying purposes.

(3) *Grain shipped in bond.* Official inspection and weighing requirements do not apply to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with applicable regulations of the United States Customs Service (19 CFR Part 18).

(4) *Grain exported by rail or truck to Canada or Mexico.* Inspection and weighing requirements do not apply to grain exported by rail or truck from the United States to Canada or Mexico.

(5) *Grain not sold by grade.* Official inspection requirements may be waived by the Service on a shipment-by-shipment basis for export grain not sold, offered for sale, or consigned for sale by official grade if (i) the contract and any amendments clearly show that the buyer and seller mutually agree to ship the grain without official inspection and (ii) a copy of the contract and any amendments is furnished in advance of loading, along with a completed application on a form prescribed by the Service.

(6) *Service not available.* Upon request, any required official inspection or Class X weighing of grain may be waived on a shipment-by-shipment basis if (i) official personnel are not and will not be available within a 24-hour period to perform needed inspection or weighing services and (ii) both the buyer and seller of the grain are made aware that the grain has not been officially inspected or Class X weighed.

(7) *Emergency waiver.* Upon request, the requirements for official inspection or Class X weighing may be waived whenever the Service determines (i) that an emergency exists that precludes official inspection or Class X weighing and (ii) that granting an emergency waiver will not impair the objectives of the Act. To qualify for an emergency waiver, the exporter or elevator operator shall make timely application and comply with all conditions which may be required by the Service.

(Approved by the Office of Management and Budget under control number 0580-0011)

[50 FR 49669, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49669, Dec. 4, 1985, § 800.19 was redesignated as § 800.18 and revised, effective January 3, 1986. For the convenience of the user the superseded text appears as follows:

§ 800.19 Exemptions and waivers of the official inspection and Class X weighing requirements.

(a) *Exemptions.* (1) *15,000 metric-ton exemption.* Official inspection and Class X weighing requirements shall apply only to exporters and individual elevator operators who (i) exported 15,000 metric tons or more of grain during the preceding calendar year, or (ii) have exported 15,000 metric tons or more of grain during the current calendar year. Exporters and elevator operators who are exempted by reason of this paragraph shall, as a condition of exemption, keep complete and accurate records of all shipments of export grain, including each exempted shipment, and make the records available to the Service, upon request, for purposes of verification. The provisions for record retention are the same as those of § 800.25(g). In addition, the exporters or elevator operators shall notify the Service in writing of the intention to export grain under this exemption. In the case of lots of grain exempted under this provision, if such lots are required by contract to be officially inspected or officially weighed, or if the lots are represented by official inspection or official weight certificates, then such certificates must meet the requirements of Section 5 of the Act for export grain.

(2) *Grain exported for seeding purposes.* Inspection and weighing requirements shall not apply to grain exported for seeding purposes, provided that (i) the grain is (A) sold or consigned for sale and invoiced as seed; and (B) identified as seed for seeding purposes on the Shipper's Export Declaration; and (ii) copies of the sales contract, invoice, bill of lading, and related merchandising and shipping documents are made available, upon request by the Service, for review or copying purposes.

(3) *Grain shipped in bond.* Inspection and weighing requirements shall not apply to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with applicable regulations of the United States Customs Service (19 CFR Part 18).

(4) *Grain shipped by rail or truck to Canada or Mexico.* Official inspection and Class X weighing requirements shall not apply to grain that is shipped by rail or by truck from the United States to Canada or to Mexico. If requested, subject to the conditions for obtaining official services in § 800.46, official services will be provided by the official agency or where applicable, the field office assigned to perform official functions, where the grain will be offered for official services.

(b) *Waivers*—(1) *Grain not sold by grade.* The official inspection requirements shall be waived by the Service on a shipment-by-shipment basis for export grain not sold, offered for sale, or consigned for sale by grade if (i) the contract and any amendments thereto clearly show that the buyer and seller mutually agree to ship the grain without official inspection and (ii) a copy of the contract and any amendments thereto as prescribed in the instructions is furnished to the Service in advance of loading, along with a completed application on a form prescribed by the Service.

(2) *Service not available.* Upon request by the exporter, the shipper, or the shipper's agent, any required inspection or weighing of grain may be waived by the Service on a shipment-by-shipment basis if the Service determines that (i) official personnel are not and will not be available within a 24-hour period to perform needed inspection or weighing services and (ii) both the buyer and seller of the grain are made aware that the grain has not been officially inspected or Class X weighed.

(3) *Emergency waiver.* Upon request by an exporter, the requirements for official inspection or Class X weighing may be waived by the Service whenever the Service determines (i) that a genuine emergency exists that precludes the official inspection or Class X weighing and (ii) that granting an emergency waiver would not impair the objectives of the Act. To qualify for an emergency waiver, the exporter or elevator operator must make timely application to the Service and comply fully with all conditions which may be attached to the waiver by the Service.

(Approved by the Office of Management and Budget under control number 0580-0001)

(Secs. 9, 18, Pub. L. 94-582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e); sec. 6, Pub. L. 94-582, 90 Stat. 2869 (7 U.S.C. 77); 44 U.S.C. 3506)

[45 FR 15810, Mar. 11, 1980; 45 FR 55118, Aug. 18, 1980; 46 FR 30323, June 5, 1981; 47 FR 42717, Sept. 29, 1982; 48 FR 44453, Sept. 29, 1983]

RECORDKEEPING AND ACCESS TO FACILITIES

§ 800.25 Elevator and merchandising records required to be kept.

(a) *Elevator recordkeeping.* Every person and every State or political subdivision of a State that (1) owns or operates an elevator that (i) ships cargo grain or (ii) receives or ships grain via railroad and (2) has obtained or obtains official inspection or official weighing services other than (i) a submitted sample inspection service as prescribed in § 800.76(d), or (ii) a sampling service as prescribed in § 800.76(e), or (iii) a stowage examination service as prescribed in § 800.76(f), shall keep complete and accurate records of all receipts and shipments of grain by the elevator, as specified in paragraph (d) of this section and all other records for receipts and shipments such as way bills, bills of lading, and manifest that are maintained by the elevator in the normal course of good business practice.

(b) *Merchandiser recordkeeping requirements.* Every merchandiser who obtains official inspection or Class X or Class Y weighing services for the grain other than (1) a submitted sample inspection service as prescribed in § 800.76(d), or (2) a sampling service as prescribed in § 800.76(e), or (3) a stowage examination service as prescribed in § 800.76(f), shall keep complete and accurate records of purchases and sales of grain, as specified in paragraph (e) of this section.

(c) *Elevator records of receipts and shipments*—(1) *Receipts.* Complete and accurate records of receipts shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain unloaded into or received by the elevator, the date the grain was received, the method of transportation, and the identification of the carriers or containers.

(2) *Shipments.* The complete record of shipments shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain loaded out, shipped, or delivered for shipment by the elevator; the date the grain was shipped or delivered for shipment; the method of transportation; and the identity of the carrier or container.

(d) *Merchandiser records of purchases and sales*—(1) *Purchases.* The complete record of purchases shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain purchased by the merchandiser, the date the grain was purchased, the method of transportation, and the identity of the carriers or containers.

(2) *Sales.* The complete record of sales shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain sold by a merchandiser, the date the grain was sold, the method of transportation, and the identity of the carriers or containers.

(e) *Preparing and keeping records.* The method and order of keeping records specified in this section shall be at the discretion of the elevator or merchandiser but shall, in the case of export elevators at export port locations, facilitate a reconciliation of receipts, shipments, and stocks on hand. This requirement does not restrict or modify the requirements of any other Federal or State statute with regard to recordkeeping.

(f) *Retention period.* The minimum retention period for the records specified in this section shall be 3 years after the date of the transaction or activity; but in specific cases they may be required by the Administrator to be maintained for not more than 3 years in addition to the 3-year period if, in his judgment, the retention of the records for the longer period is necessary for the effective administration and enforcement of the Act. This requirement does not restrict or modify the requirements of any other Federal or State statute with regard to recordkeeping.

(Approved by the Office of Management and Budget under control number 0580-0001)

(44 U.S.C. 3506)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453, Sept. 29, 1983; 49 FR 36071, Sept. 14, 1984]

§ 800.26 Access to records and facilities.

(a) *Access to records.* Owners or operators of elevators and merchandisers who are required by § 800.25 to keep records shall permit authorized representatives of the Secretary and the Administrator to have access to and to copy all the records at the expense of the Service during customary business hours.

(b) *Access to facilities.* Owners and operators of elevators and merchandisers subject to the recordkeeping requirements of this section and § 800.25 shall permit authorized representatives of the Secretary and the Administrator to have access to all areas and facilities of the elevator used in handling, receiving, shipping, or weighing their grain. Before entering an elevator, the authorized representative of the Secretary or Administrator will contact or otherwise notify the elevator manager or his or her other representative and furnish proof of identity and authority. While in the elevator, the representative will abide by the safety regulations in effect at the elevator.

REGISTRATION

§ 800.30 Foreign commerce grain business.

"Foreign commerce grain business" is defined as the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting grain for sale in foreign commerce. This provision shall not include:

(a) Any person who only incidentally or occasionally buys for sale, or handles, weighs, or transports grain for sale and is not engaged in the regular business of buying grain for sale, or handling, weighing, or transporting grain for sale;

(b) Any producer of grain who only incidentally or occasionally sells or transports grain which the producer has purchased;

(c) Any person who transports grain for hire and does not own a financial interest in such grain; or

(d) Any person who buys grain for feeding or processing and not for the purpose of reselling and only incidentally or occasionally sells such grain as grain.

[48 FR 44455, Sept. 29, 1983]

§ 800.31 Who must register.

Each person who has engaged in foreign commerce grain business totaling 15,000 or more metric tons during the preceding or current calendar year must register with the Service and shall be deemed to be regularly engaged in foreign commerce grain business. This includes foreign-based firms operating in the United States but does not include foreign governments or their agents. The Service will, upon request, register persons not required to register under this section if they comply with the requirements of §§ 800.33 and 800.34.

(Approved by the Office of Management and Budget under control number 0580-0003)

[48 FR 44453 and 44455, Sept. 29, 1983]

§ 800.32 When to register.

A person shall submit an application for registration to the Service at least 30 calendar days before regularly engaging in foreign commerce grain business according to § 800.31. For good cause shown, the Service may waive this 30-day requirement.

(Approved by the Office of Management and Budget under control number 0580-0003)

[48 FR 44453 and 44455, Sept. 29, 1983]

§ 800.33 How to register.

Any person who is required or desires to register must submit an application for registration to the Service. Application forms can be obtained from the Service. Each application shall: (a) Be typewritten or legibly written in English; (b) include all information required by the application form; and (c) be signed by the applicant. The information required by this paragraph may be submitted to the Service via telephone, subject to written confirmation. An applicant shall furnish any additional information requested by the Service for consideration of the application.

(Approved by the Office of Management and Budget under control number 0580-0003)

[48 FR 44453 and 44456, Sept. 29, 1983]

§ 800.34 Registration fee.

An applicant shall submit the registration fee prescribed in § 800.71 with the completed application. If an application is dismissed, the fee shall be refunded by the Service. No fee or portion of a fee shall be refunded if a person is registered and the registration is subsequently suspended or revoked under § 800.39.

[48 FR 44456, Sept. 29, 1983]

§ 800.35 Review of applications.

(a) The Service shall review each application to determine if it complies with §§ 800.32, 800.33, and 800.34. If the application complies and the fee has been paid, the applicant shall be registered.

(b) If the application does not comply with §§ 800.32, 800.33, and 800.34 and the omitted information prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, the application may be dismissed. The Service shall promptly notify the applicant, in writing, of the reasons for the dismissal.

[48 FR 44456, Sept. 29, 1983]

§ 800.36 Certificates of registration.

The Service shall furnish the applicant with an original and three copies of the registration certificate. The registration shall be effective on the issue date shown on the certificate. Each certificate of registration is issued on the condition that the registrant will comply with all provisions of the Act, regulations, and instructions. The Service shall charge a fee, in accordance with § 800.71, for each additional copy of a certificate of registration requested by a registrant.

[48 FR 44456, Sept. 29, 1983]

§ 800.37 Notice of change in information.

Each registrant shall notify the Service within 30 days of any change in the information contained in the application for registration. If the notice is submitted orally, it shall be promptly confirmed in writing.

(Approved by the Office of Management and Budget under control number 0580-0008)

[48 FR 44453 and 44456, Sept. 29, 1983]

§ 800.38 Termination and renewal of registration.

Each certificate of registration shall terminate on December 31 of the calendar year for which it is issued. The Service shall send a letter to each registrant notifying the registrant of the impending termination of the registration and providing instructions for requesting renewal. The registration may be renewed in accordance with §§ 800.33 and 800.34. Failure to receive the letter shall not exempt registrants from the responsibility of renewing their registration if required by § 800.31.

[48 FR 44456, Sept. 29, 1983]

§ 800.39 Suspension or revocation of registration for cause.

(a) *General.* Registration is subject to suspension or revocation whenever the Administrator determines that the registrant has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(b) *Procedure.* Before the Service suspends or revokes a registration, the registrant (hereinafter the "respondent"): (1) Shall be notified of the proposed action and the reasons therefor and (2) shall be afforded opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, 1.130 through 1.151). Prior to formal adjudicatory proceedings, the Service may allow the respondent to express views on the action proposed by the Service in an informal conference before the Administrator. If the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

[48 FR 44456, Sept. 29, 1983]

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

§ 800.45 Availability of official services.

(a) *Original inspection and weighing services.* Original inspection and weighing services on grain are available according to this section and §§ 800.115 through 800.118 when requested by an interested person.

(b) *Reinspection, review of weighing, and appeal inspection services.* Reinspection, review of weighing, appeal inspection, and Board appeal inspection services are available when requested by an interested person, according to §§ 800.125 through 800.129 and §§ 800.135 through 800.139.

(c) *Proof of authorization.* If an application for official services is filed by a person representing the applicant, the agency or the field office receiving the application may require written proof of the authority to file the application.

(Approved by the Office of Management and Budget under control number 0580-0003)

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30913, Aug. 2, 1984, as amended at 50 FR 45392, Oct. 31, 1985]

§ 800.46 Requirements for obtaining official services.

(a) *Consent and agreement by applicant.* In submitting a request for official services, the applicant and the owner of the grain consent to the special and general requirements specified in paragraphs (b) and (c) of this section. These requirements are essential to carry out the purposes or provisions of the Act.

(b) *General requirements*—(1) *Access to grain.* Grain on which official services are to be performed shall, except as provided in §§ 800.85, 800.86, 800.98, and 800.99, be made accessible by the applicant for the performance of the requested official service and related monitoring and supervision activities. For the purposes of this section, grain is not "accessible" if it is offered for official services (i) in containers or carriers that are closed and cannot, with reasonable effort, be opened by or for official personnel; (ii) when any portion is located so as to prohibit the securing or a representative sample; or (iii) under conditions prescribed in the instructions as being hazardous to the health or safety of official personnel.

(2) *Working space.* When official services are performed at an elevator, adequate and separate space must be provided by the applicant for the performance of the requested service and related monitoring and supervision activities. Space will be "adequate" if it meets the space, location, and safety requirements specified in the instructions.

(3) *Notice of changes.* The operator of each facility at which official services are performed must notify the appropriate agency or field office promptly, in full detail, of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator that could or would affect the proper performance of official services.

(4) *Loading and unloading conditions.* As applicable, each applicant for official services must provide or arrange for suitable conditions in the (i) loading and unloading areas and the truck and railroad holding areas; (ii) gallery and other grain-conveying areas; (iii) elevator legs, distributor, and spout areas; (iv) pier or dock areas; (v) deck and stowage areas in the carrier; and (vi) equipment used in loading or unloading and handling the grain. Suitable conditions are those which will facilitate accurate inspection and weighing, maintain the quantity and the quality of the grain that is to be officially inspected or weighed, and not be hazardous to the health and safety of official pesonnel, as prescribed in the instructions.

(5) *Timely arrangements.* Requests for official service shall be made in a timely manner; otherwise, official personnel may not be available to provide the requested service. For the purpose of this paragraph, "timely manner" shall mean not later than 2 p.m., local time, of the preceding business day.

(6) *Observation of activities.* Each applicant for official services must provide any interested person, or their agent, an opportunity to observe sampling, inspection, weighing, and loading or unloading of grain. Appropriate observation areas shall be mutually defined by the Service and facility operator. The areas shall be safe and shall afford a clear and unobstructed view of the performance of the activity, but shall not permit a close over-the-shoulder type of observation by the interested person.

(7) *Payment of bills.* Each applicant, for services under the Act, must pay bills for the services according to §§ 800.70 through 800.73.

(8) *Written confirmations.* When requested by the agency or field office, verbal requests for official services shall be confirmed in writing. Each written request shall be signed by the applicant, or the applicant's agent, and shall show or be accompanied by the following information: (i) The identification, quantity, and specific location of the grain; (ii) the name and mailing address of the applicant; (iii) the kind and scope of services desired; and (iv) any other information requested by the agency or field office.

(9) *Names and addresses of interested persons.* When requested, each applicant for official services shall show on the application form the name and address of each known interested person.

(10) *Surrender of superseded certificates.* When a request for official service results in a certificate being superseded, the superseded certificate must be promptly surrendered.

(11) *Recordkeeping and access.* Each applicant for official services must comply with applicable recordkeeping and access-to-facility provisions in §§ 800.25 and 800.26.

(12) *Monitoring equipment.* Owners and operators of elevators shall, upon a finding of need by the Administrator, provide equipment necesary for the monitoring by official personnel of grain loading, unloading, handling, sampling, weighing, inspection, and related activities. The finding of need will be based primarily on a consideration of manpower and efficiency.

(c) *Special requirements for official Class X and Class Y weighing services*—(1) *General.* Weighing services shall be provided only at weighing facilities which have met the conditions, duties, and responsibilities specified in section 7A(f) of the Act and this section of the regulations. Weighing services will be available only in accordance with the requirements of § 800.115. Facilities desiring weighing services should contact the Service in advance to allow the Service time to determine if the facility complies with the provisions of the Act and regulations.

(2) *Conditions.* The facility shall provide the following information annually to the Service: (i) The facility owner's name and address; (ii) the facility operator's name and address; (iii) the name of each individual employed by the facility as a weigher and a statement that each individual: (A) Has a technical ability to operate grain weighing equipment and (B) has a reputation for honesty and integrity; (iv) a blueprint or similar drawing of the facility showing the location of: (A) The loading, unloading, and grain handling systems; (B) the scale systems used or to be used in weighing grain; and (C) the bins and other storage areas; (v) the identification of each scale in the facility that is to be used for weighing grain under the Act; (vi) the following information regarding automated data processing systems: (A) Overall system intent, design, and layout; (B) make, model, and technical specifications of all hardware; (C) description of software, language used, and flow charts of all programs, subprograms, routines, and subroutines; and (D) complete operating instructions; and (vii) any other information deemed necessary to carry out the provisions of the Act.

If a facility has, or plans to have, an automated data processing system which is used in conjunction with any portion of the scale system, grain handling system, or the preparing or printing of official weight certificates, the facility shall make available to the Service sufficient documentation to ensure that the system cannot be used deceptively or otherwise provide inaccurate information. The Service or approved scale testing and certification organization shall conduct an onsite review to evaluate the performance and accuracy of each scale that will be used for weighing grain under the Act, and the performance of the grain loading, unloading, and related grain handling equipment and systems.

(3) *Duties and responsibilities of weighing facilities requesting official services*—(i) *Providing official services.* Upon request, each weighing facility shall permit official weighing services to be performed promptly.

(ii) *Supervision.* Each weighing facility shall supervise its employees and shall take action necessary to assure that employees are performing their duties according to the Act, regulations, and instructions and are not performing prohibited functions or are not involved in any action prohibited by the Act, regulations, and instructions.

(iii) *Facilities and equipment*—(A) *General.* Each weighing facility shall obtain and maintain facilities and equipment which the Service determines are needed for weighing services performed at the facility. Each facility shall operate and shall maintain each scale system and related grain handling system used in weighing according to instructions issued by the manufacturer and by the Service. A scale log book for each approved scale used for official weighing services shall be maintained according to instructions at each weighing facility.

(B) *Malfunction of scales.* Scales or scale systems that are operating in other than a correct and approved manner shall not be used for weighing grain under the Act. Before the malfunctioning scale or scale system can be used again for weighing grain under the Act, it shall be repaired and determined to be operating properly by the Service or approved scale testing and certification organization.

(iv) *Oral directives.* FGIS oral directives issued to elevator personnel shall be confirmed in writing upon request by elevator management. Whenever practicable, the Service shall issue oral directives through elevator management officials.

(Approved by the Office of Management and Budget under control number 0580-0003)

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984, as amended at 49 FR 49587, Dec. 21, 1984; 50 FR 45392, Oct. 31, 1985]

§ 800.47 Withdrawal of request for official services.

An applicant may withdraw a request for official services any time before official personnel release results, either verbally or in writing. See § 800.51 for reimbursement of expenses, if any.

(Secs. 8, 9, 0, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal*—(1) *General.* An agency or the Service shall dismiss requests for official services when (i) § 800.76 prohibits the requested service; (ii) performing the requested service is not practicable; (iii) the agency or the Service lacks authority under the Act or regulations; or (iv) sufficient information is not available to make an accurate determination.

(2) *Original services.* A request for original services shall be dismissed if a reinspection, review of weighing, appeal inspection, or Board appeal inspection has been performed on the same lot at the same specified service point within 5 business days.

(3) *Reinspection, appeal inspection, or Board appeal inspection services.* A request for a reinspection, appeal inspection, or Board appeal inspection service shall be dismissed when: (i) The kind and scope are different from the kind and scope of the last inspection service; (ii) the condition of the grain has undergone a material change; (iii) the request specifies a representative file sample and a representative file sample is not available, (iv) the applicant requests that a new sample be obtained and a new sample cannot be obtained; or (v) the service cannot be performed within 5 business

days of the date of the last inspection date.

(4) *Review of weighing services.* A request for review of weighing services shall be dismissed when the request (i) is filed before the weighing results have been released, or (ii) is filed more than 90 calendar days after the date of the original service.

(b) *Procedure for dismissal.* When an agency or the Service proposes to dismiss a request for official services, the applicant shall be notified of the proposed action. The applicant will then be afforded reasonable time to take corrective action or to demonstrate there is no basis for the dismissal. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified again of the decision to dismiss the request for service, and any results of official services shall not be released.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 45392, Oct. 31, 1985]

§ 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* An agency or the Service shall conditionally withhold requests for official services when an applicant fails to meet any requirement prescribed in § 800.46.

(b) *Procedure and withholding.* When an agency or the Service proposes to conditionally withhold official services, the applicant shall be notified of the reason for the proposed action. The applicant will then be afforded reasonable time to take corrective action or to show that there is no basis for withholding services. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified. Any results of official services shall not be released when a request for service is withheld.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§ 800.50 Refusal of official services.

(a) *Grounds for refusal.* Any or all services available to an applicant (hereafter in this section "respondent") under the Act may be refused, either temporarily or indefinitely, by the Service for causes prescribed in Section 10 of the Act. Such refusal by the Service may be restricted to the particular facility or applicant (if not a facility) found in violation or to a particular type of service, as the facts may warrant. Such action may be in addition to, or in lieu of, other criminal or remedial action authorized by the Act.

(b) *Provision and procedure for summary refusal.* The Service may, without first affording the respondent a hearing, refuse to provide official inspection and Class X or Y weighing services pending final determination of the proceedings whenever the Service has reason to believe there is cause as prescribed in section 10 of the Act for refusing such official services and considers such action to be in the best interest of the official services system under the Act; provided that within 7 days after refusal of such service, the Service shall afford the respondent an opportunity for a hearing as provided under paragraph (c) of this section. Pending final determination, the Service may terminate the temporary refusal if alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(c) *Procedure for other than summary refusal.* Except as provided in paragraph (b) of this section, before the Service refuses to provide official services the respondent shall be (1) notified of the services that are to be refused, the locations at which and the time period for which service will be refused, and the reasons for the refusal; and (2) afforded an opportunity for a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 *et seq.*). At the discretion of the Service, prior to initiation of formal adjudicatory proceedings, the respondent may be given an opportunity to express his or her views on the action proposed by the Service in an informal conference before the Administrator of the Service. If, as a result of such an informal conference, the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

§ 800.51 Expenses of agency, field office, or Board of Appeals and Review.

For any request that has been dismissed or withdrawn under § 800.47, § 800.48, or § 800.49, respectively, each applicant shall pay expenses incurred by the agency or the Service.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§ 800.52 Official services not to be denied.

Subject to the provisions of §§ 800.48, 800.49, and 800.50, no person entitled to official services under the Act shall be denied or deprived of the right thereto by reason of any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization; or by any contract, agreement, or other understanding.

DESCRIPTIONS

§ 800.55 Descriptions by grade.

(a) *General.* In any sale, offer for sale, or consignment for sale, which involves the shipment of grain in interstate or foreign commerce, the description of grain, as being of a grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, is prohibited if such description is other than by an official grade designation, with or without additional information as to specified factors.

An official grade designation contains any of the following: The term "U.S.," the numerals 1 through 5, the term "Sample grade," or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain.

(b) *Proprietary brand names or trademarks.* A description of grain by a proprietary brand name or a trademark that does not resemble an official grade designation will not be considered to be a description by grade; but a description by a proprietary brand name or trademark that contains singly or in combination any of the terms referenced in paragraph (a) of this section shall be considered to resemble an official grade designation.

(c) *Use of one or more factor designations.* In interstate commerce, a description of grain by the use of one or more grade factor designations which appear in the Official United States Standards for Grain or by other criteria will not be considered to be a description by grade.

(d) *False or misleading descriptions.* In any sale, offer for sale, or consignment for sale of any grain which involves the shipment of grain from the United States to any place outside thereof, knowingly using a false or misleading description of grain by official grade designation, or other description is prohibited.

[50 FR 9982, Mar. 13, 1985]

§ 800.56 Requirements on descriptions.

Section 13 of the Act contains certain prohibitions with respect to the use of official grade designations, official marks, and other representations with respect to grain.

(a) The use of an official grade designation, with or without factor information, or of official criteria information, or of the term "official grain standards," shall not, without additional information, be considered to be a representation that the grain was officially inspected.

(b) The use of any symbol or term listed as an official mark, at § 800.0(b)(68), with respect to grain shall be considered to be a representation of official service under the Act: Provided however, that the use of the official marks "official certificate;" "officially inspected;" "official inspection;" "officially weighed;" "official weight;" and "official weighing" shall not be considered to be a representation of official service under the Act if it is clearly shown that the activity occurred under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*): Provided further, that the use of the official mark "officially tested" with respect to grain inspection and weighing equipment shall not be considered to be a representation of testing under the Act if it is clearly shown that the equipment was tested under a State statute.

[50 FR 9982, Mar. 13, 1985]

DECEPTIVE PRACTICES

§ 800.60 Deceptive actions and practices.

In the absence of prior adequate notice to appropriate official personnel, any action or practice, including the loading, weighing, handling, or sampling of grain that knowingly causes or is an attempt to cause the issuance by official personnel of a false or incorrect official certificate or other official form, is deemed to be deceptive and, as such, is a violation of section 13(a)(3) of the Act. For the purposes of this paragraph, adequate notice is written or oral notice given to an agency or the Service, as applicable, before official personnel begin to perform official inspection or weighing services. If oral notice is given, it must be confirmed in writing within 2 business days. To be adequate, the notice must explain the nature and extent of the action or practice in question and must identify the grain, stowage container, equipment, facility, and the official personnel actually or potentially involved.

(Approved by the Office of Management and Budget under control number 0580-0006)

[48 FR 17330, Apr. 22, 1983, as amended at 48 FR 44453, Sept. 29, 1983]

FEES

§ 800.70 Fees for official services performed by agencies.

(a) *Assessment and use of fees.* (1) Fees assessed by an agency for official inspection and Class X or Class Y weighing services or testing of inspection equipment shall be reasonable and nondiscriminatory.

(2) In the case of a State or local governmental agency, fees shall not be used for any purpose other than to finance the cost of the official inspection and Class X or Class Y weighing service and inspection equipment testing service performed by the agency or the cost of other closely related programs administered by the agency.

(b) *Approval required*—(1) *Restriction.* Only fees that meet the requirements stated in this section and are approved by the Service as reasonable and nondiscriminatory may be charged by an agency.

(2) *Exceptions.* For good cause shown by an agency, the Administrator may grant case-by-case exceptions to the requirements in this section, provided that a determination is made that the agency fees would be reasonable and nondiscriminatory.

(c) *Reasonable fees.* In determining if an agency's fees are reasonable, the Service will consider whether the fees: (1) Cover the estimated total cost to the agency of (i) official inspection services, (ii) Class X or Class Y weighing services, (iii) inspection equipment testing services, and (iv) related supervision and monitoring activities performed by the agency; (2) Are reasonably consistent with fees assessed by adjacent agencies for similar services; (3) Are assessed on the basis of the average cost of performing the same or similar services at all locations served by the agency; and (4) Are supported by sufficient information which shows how the fees were developed.

(d) *Nondiscriminatory fees.* In determining if fees are nondiscriminatory, the Service will consider whether the fees are collected from all applicants for official service in accordance with the approved fee schedule. Charges for time and travel incurred in providing service at a location away from a specified service point shall be assessed in accordance with the approved fee schedule.

(e) *Schedule of fees to be established.* (1) Each agency shall establish a schedule of fees for official services which the agency is delegated or designated the authority to perform. The schedule shall be in a standard format in accordance with the instructions. Such schedules may include fees for nonofficial services provided by the agency, but they shall be clearly identified and will not be subject to approval by the Service.

(2) The schedule shall be published and made available by the agency to all users of its services.

(f) *Request for approval of fees*—(1) *Time requirement.* A request for approval of a new or revised fee shall be submitted to the Service not less than 60 days in advance of the proposed effective date for the fee. Failure to submit a request within the prescribed time period may be considered grounds for postponement or denial of the request.

(2) *Contents of request.* Each request shall show (i) the present fee, if any, and the proposed fee, together with data showing in detail how the fee was developed, and (ii) the proposed effective date.

(g) *Review of request*—(1) *Approval action.* If upon review the Service finds that the request and supporting data justify the new or revised fee, the request will be marked "approved" and returned to the agency.

(2) *Denial action.* If the Service finds that the request and supporting data do not justify the new or revised fee, approval of the request will be withheld pending receipt of any additional supporting data which the agency has to offer. If the data are not submitted within a reasonable period, the request shall be denied. In the case of a denial of a request, the agency shall be notified of the reason for denial.

(Approved by the Office of Management and Budget under control numbers 0580-0003 and 0580-0012)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 48 FR 44453, Sept. 29, 1983; 50 FR 30131, July 24, 1985]

§ 800.71 Fees assessed by the Service.

(a) *Official inspection and weighing services.* The fees shown in Schedules A and B apply to official inspection and weighing services performed by FGIS in the United States and Canada. The fees shown in Schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that have been delegated additional responsibilities by FGIS. These States shall be assessed fees as set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay prescribed fees within 30 days after being due, shall result in automatic termination of the delegation or designation. The delegation or designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination are paid within 60 days of the termination.

SCHEDULE A—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES, PERFORMED IN THE UNITED STATES.[1]

Inspection & weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:		
(i) Contract (per hour per service representative)	$25.00	$34.00
(ii) Noncontract (per hour per service representative)	30.40	41.40
(2) Reinspection, appeal inspection, Board appeal inspection and review of weighing services:[2] [3]		
(i) Grading service:		
(A) Grade and factors (per sample)	43.40	56.40
(B) Protein test (per sample)	10.85	14.10
(C) Factor determination (per factor)	21.70	28.20
(ii) Sampling services (per hour per service representative)	43.40	56.40
(iii) Review of weighing service (per hour per service representative)	43.40	56.40
(3) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

SCHEDULE B—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA [1]

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection services and official weighing services:[2] [3]		
(i) Contract services (per hour per service representative)	$36.40	$44.40
(ii) Noncontract service (per hour per service representative)	45.00	54.00
(2) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] Board appeal inspections are based on file samples. See § 800.71, Schedule A for Board Appeal fees.

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES[1]

TABLE 1

Inspection services (bulk or sacked grain)	Offical inspection or reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection [2]	$0.30
(B) Boxcar or hopper car (per inspection[2]	0.95
(C) Barge (per inspection)[2]	6.15
(D) Ship (per ship)[3]	49.20
(E) All other lots (per inspection)[2] [4]	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors)[5]	0.20
(B) Official criteria[2] [6]	0.20
(2) Stowage examination services:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determinations (per inspection)	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors)[5]	0.20
(B) Official criteria[2] [6]	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria[2] [6]	0.20

NOTE: The footnotes for Table 1 are shown at the end of Table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(Class X)	(Class Y)
(1) Official weighing services:		
(i) Truck or trailer (per carrier)	$0.30	$0.20
(ii) Boxcar or hopper car (per carrier)	0.95	0.25
(iii) Barge (per carrier)	6.15	1.55
(iv) Ship (per carrier) [3]	49.20	N/A
(v) All other lots (per lot or part lot) [4]	0.30	0.20

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.

[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans and inhouse bin transfers.

[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in Table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.

(b) *Registration certificates and renewals.* (1) Fees for registration certificates and renewals will be based on the nature of the business:

(i) Firms engaged in the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce	$135.00
(ii) Firms engaged in the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce who also are in a control relationship, as defined in Section 17A(b)(2) of the Act, with respect to a business engaged in the business of buying, handling, weighing, or transporting grain for sale in interstate commerce	270.00

(2) Requests for extra copies of registration certificates shall be accompanied by a fee of $2.50 for each copy.

(c) *Designation amendments.* An application for an amendment to a designation shall be accompanied by a fee of $75.00.

(d) Each application for approval to operate as a scale testing organization shall be accompanied by a fee of $250.

(Secs. 8 and 9, Pub. L. 94-582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79a(1)); secs. 9, 18, Pub. L. 94-582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e); secs. 8 and 9, Pub. L. 94-582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79a(1)), as amended by Pub. L. 97-35, 95 Stat. 371, 372)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 49 FR 26563, June 28, 1984; 50 FR 38504, Sept. 23, 1985]

§ 800.72 Explanation of service fees and additional fees.

(a) *Costs included in the fees.* Fees for official inspection, Class X or Class Y weighing, and related services performed in the United States and Canada include: (1) The cost of performing the service and related supervision and administration costs; (2) the cost of per diem or subsistence during travel and the cost of transportation to perform the service; (3) the cost of first-class mail service; (4) the cost of overtime and premium pay; and (5) the cost of certification, except as provided in § 800.72(b) (1) and (2).

(b) *Additional fees.* Fees in addition to the hourly or unit fee will be assessed when an applicant requests: (1) More than the original and three copies of a certificate; (2) onsite typing of certificates or typing of certificates at the FGIS field office during other than normal office working hours; and (3) the use of express-type mail or courier mail service.

(Secs. 8, 9, 18, Pub. L. 94-582, 90 Stat. 2873, 2877, 2884 (7 U.S.C. 79(j), 79a(1), 87(e) as amended by Pub. L. 97-35, 95 Stat. 371, 372)

[49 FR 26564, June 28, 1984]

§ 800.73 Computation and payment of service fees; general fee information.

(a) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for: (1) Travel from the FGIS field office or assigned duty station to the service point and return; and (2) the performance of the requested service, less mealtime.

(b) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed for the entire period of scheduled service when: (1) Service has been requested at a specified location; (2) a Service representative is on duty and ready to provide service but the Service representative is unable to do so because of a delay not caused by the Service; and (3) FGIS officials determine that the Service representative cannot be utilized to provide service elsewhere or cannot be released without cost to the Service.

(c) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the entire period of scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point, or if the service request is not cancelled by 2 p.m., local time, *the business day preceding* the date of scheduled service. However, hourly fees will not be assessed to the applicant if FGIS officials determine that the Service representative can be utilized elsewhere or released without cost to the Service or under the provisions set forth in § 800.47(b).

(d) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by Service representatives, including additional fees as provided in § 800.72(b), shall be assessed to and paid by the applicant for the services.

(e) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested Service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(f) *Form of payment.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to the U.S. Department of Agriculture, Federal Grain Inspection Service.

(Secs. 8, 9, 18, Pub. L. 94-582, 90 Stat. 2873, 2877, 2884 (7 U.S.C. 79(j), 79a(1), 87(e) as amended by Pub. L. 97-35, 95 Stat. 371, 372))

[49 FR 26564, June 28, 1984, as amended at 49 FR 36072, Sept. 14, 1984]

KINDS OF OFFICIAL SERVICES

§ 800.75 Kinds of official inspection and weighing services.

(a) *General.* Paragraphs (b) through (m) of this section describe the kinds of official service available. Each kind of service has several levels. Sections 800.115, 800.116, 800.117, and 800.118 explain Original Services, §§ 800.125, 800.126, 800.127, 800.128, and 800.129 explain Reinspection Services and Review of Weighing Services, and §§ 800.135, 800.136, 800.137, 800.138, and 800.139 explain Appeal Inspection Services. The results of each official service listed in paragraphs (b) through (j) will be certificated according to § 800.160.

(b) *Official sample-lot inspection service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) analyzing the grain sample for grade, official factors, or official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(c) *Warehouseman's sample-lot inspection service.* This service consists of (1) a licensed warehouseman sampler (i) sampling an identified lot of grain using an approved diverter-type mechanical sampler and (ii) sending the sample to official personnel and (2) official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(d) *Submitted sample inspection service.* This service consists of an applicant or an applicant's agent submitting a grain sample to official personnel, and official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(e) *Official sampling service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) forwarding a representative portion(s) of the sample along with a copy of the certificate, as requested by the applicant.

(f) *Official stowage examination service.* (1) This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances, and foreign odor; and is suitable to store or carry grain.

(2) A stowage examination may be obtained as a separate service or with one or more other services. Approval of the stowage space is required for official sample-lot inspection services on all export lots of grain and all official sample-lot inspection services performed on outbound domestic lots of grain which are sampled and inspected at the time of loading. Also, approval of the stowage space is required for any weighing services performed on all outbound land carriers.

(g) *Class X weighing service.* This service consists of official personnel (1) completely supervising the loading or unloading of an identified lot of grain and (2) physically weighing or completely supervising approved weighers weighing the grain.

(h) *Class Y weighing service.* This service consists of (1) approved weighers physically weighing the grain and (2) official personnel partially or completely supervising the loading or unloading of an identified lot of grain.

(i) *Checkweighing service (sacked grain).* This service consists of official personnel or approved weighers under the supervision of official personnel (1) physically weighing a selected number of sacks from a grain lot and (2) determining the estimated total gross, tare, and new weights, or the estimated average gross or net weight per filled sack according to the regulations, instructions, and request by the applicant.

(j) *Checkloading service.* This service consists of official personnel (1) performing a stowage examination; (2) computing the number of filled grain containers loaded aboard a carrier; and (3) if practicable, sealing the carrier for security.

(k) *Test weight reverification service.* This service consists of official personnel (1) comparing the weight of elevator test weights with known weights; (2) correcting the elevator test weights, when necessary; and (3) issuing a Report of Test.

(l) *Railroad track scale testing service.* This service consists of official personnel (1) testing railroad track scales with Service-controlled test cars and (2) issuing a Report of Test.

(m) *Hopper and truck scale testing service.* This service consists of official personnel (1) testing hopper and truck scales and (2) issuing a Report of Test.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

[50 FR 45392, Oct. 31, 1985]

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any function or provide any service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act.

(b) *Restricted services*—(1) *Not standardized grain.* When an inspection or weighing service is requested on a sample or a lot of grain which does not meet the requirements for grain as set forth in the Official U.S. Standards for Grain, a certificate showing the words "Not Standardized Grain" shall be issued according to the instructions.

(2) *Grain screening.* The inspection or weighing of grain screenings may be obtained from an agency or field office according to the instructions.

[50 FR 45393, Oct. 31, 1985]

INSPECTION METHODS AND PROCEDURES

§ 800.80 Methods and order of performing official inspection services.

(a) *Methods*—(1) *General.* All official inspection services shall be performed in accordance with methods and procedures prescribed in the regulations and the instructions.

(2) *Lot inspection services.* A lot inspection service shall be based on a representative sampling and examination of the grain in the entire lot, except as provided in § 800.85, and an accurate analysis of the grain in the sample.

(3) *Stowage examination service.* A stowage examination service shall be based on a thorough and accurate examination of the carrier or container into which grain will be loaded.

(4) *Submitted sample inspection service.* A submitted sample inspection service shall be based on a submitted sample of sufficient size to enable official personnel to perform a complete analysis for grade. If a complete analysis for grade cannot be performed because of an inadequate sample size or other conditions, the request for service shall be dismissed or a factor only inspection may be performed upon request.

(5) *Reinspection and appeal inspection service.* A reinspection, appeal inspection, or Board appeal inspection service shall be based on an independent review of official grade information, official factor information, or other information consistent with the scope of the original inspection.

(b) *Order of service.* Official inspection services shall be performed, to the extent practicable, in the order in which they are received. Priority shall be given to inspections required for export grain. Priority may be given to other kinds of inspection services under the Act with the specific approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or on behalf of an applicant for inspection services shall be promptly stamped or similarly marked by official personnel to show the date of receipt.

(d) *Conflicts of interest.* No official personnel shall perform or participate in performing an official inspection service on grain or on a carrier or container in which they have a direct or indirect financial interest.

[50 FR 49669, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49669, Dec. 4, 1985, § 800.80 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.80 Methods and order of performing official inspection services.

(a) *Methods*—(1) *General.* All official sampling, testing, grading, stowage examination, and other kinds of official inspection services shall be performed in accordance with methods and procedures prescribed in the regulations and the instructions.

(2) *Lot inspection services.* A lot inspection service shall be based on a representative sampling and examination of the grain in the entire lot, except as provided in § 800.85 (f) or (g), and an accurate analysis of the grain in the samples.

(3) *Stowage examination service.* A stowage examination service shall be based on a thorough and accurate examination of the carrier or container into which grain will be loaded, in accordance with procedures prescribed in the instructions.

(4) *Submitted sample inspection service.* A submitted sample inspection service shall be based on a submitted sample of sufficient size to enable official personnel to perform an accurate analysis for complete grade. The sample size will be prescribed in the instructions. If an accurate analysis cannot be made because of an inadequate sample size or other conditions, the request for service shall be dismissed, or a factor only inspection certificate may be issued.

(5) *Reinspection and appeal inspection service.* A reinspection service, appeal inspection service, or Board appeal inspection service shall be based on an independent review of official grade information, official factor information, or other information consistent with the scope of the original inspection service. The results of previous determinations shall not be used in making the initial redetermination but shall be considered in verifying the accuracy of the redetermination.

(b) *Order of service.* Official inspection services shall be performed, to the extent practicable, in the order in which requests for service are received. Precedence shall be given to requests for inspections required for export grain. Precedence may be given to other kinds of inspection services under the Act with the specific approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or on behalf of an applicant for inspection service shall be promptly stamped or similarly marked by the agency, field office, or Board of Appeals and Review to show the date of receipt.

(d) *Conflicts of interest.* No official personnel shall perform or participate in performing an inspection service on grain or on a carrier or container in which they have a direct or indirect financial interest.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

§ 800.81 Sample requirements; General.

(a) *Samples for official sample-lot inspection service*—(1) *Original official sample-lot inspection service.* For original sample-lot inspection purposes, an official sample shall be (i) obtained by official personnel; (ii) representative of the grain in the lot; (iii) protected from manipulation, substitution, and improper or careless handling; and (iv) obtained within the prescribed geographical boundaries of the agency or field office performing the service.

(2) *Official sample-lot reinspection and appeal inspection service.* For an official sample-lot reinspection service or an official appeal sample-lot inspection service, the sample(s) on which the reinspection or appeal is determined shall (i) be obtained by official personnel and (ii) otherwise meet the requirements of paragraph (a)(1) of this section. If the reinspection or appeal inspection is determined on the basis of official file sample(s), the samples shall meet the requirements of § 800.82(d).

(3) *New sample.* Upon request and if practicable, a new sample shall be obtained and examined as a part of a reinspection or appeal inspection. The provision for a new sample shall not apply if obtaining the new sample involves a change in method of sampling.

(b) *Representative sample.* A sample shall not be considered representative unless it (1) has been obtained by official personnel, (2) is of the size prescribed in the instructions, and (3) has been obtained, handled, and submitted in accordance with the instructions. A sample which fails to meet the requirements of this paragraph may, upon request of the applicant, be inspected as a submitted sample.

(c) *Protecting samples.* Official personnel shall protect official samples, warehouseman's samples, and submitted samples from manipulation, substitution, or improper and careless handling which may deprive the samples of their representativeness or which may change the physical or chemical properties of the grain, as appropriate, from the time of sampling or receipt until the inspection services are completed and the file samples have been discarded.

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling. Upon request, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Disposition of samples*—(1) *Excess grain.* Any grain in excess of the quantity specified in the instructions for the requested service, the file samples, and samples requested by interested persons shall be returned to the lot from which the grain was obtained or to the owner of the lot or the owner's order.

(2) *Inspection samples.* Inspection samples, after they have served their intended purpose, shall be disposed of as follows:

(i) Samples which contain toxic substances or materials shall be kept out of food and feed channels, and

(ii) Official personnel shall dispose of samples obtained or submitted to them according to procedures established by the Service. Complete and accurate records of disposition shall be maintained.

(Approved by the Office of Management and Budget under control number 0580-0011).

[50 FR 49669, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49669, Dec. 4, 1985, § 800.81 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows.

§ 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service.* (1) *Original official sample-lot inspection service.* For original official sample-lot inspection purposes, an official sample must be (i) obtained by official personnel; (ii) representative of the grain in the lot; (iii) protected from manipulation, substitution, and improper or careless handling; and (iv) obtained within prescribed geographical boundaries of the agency or field office performing the service.

(2) *Official sample-lot reinspection service performed by an agency.* For an official sample-lot reinspection service performed by an agency, the sample(s) on which the reinspection is determined must (i) be obtained by official personnel and (ii) otherwise meet the requirements of paragraph (a)(1) of this section. If the reinspection is determined on the basis of official file sample(s), the file samples must meet the requirements of § 800.82(d).

(3) *Official sample-lot reinspection and appeal inspection service performed by the Service.* For an official sample-lot reinspection service or an official appeal sample-lot inspection service performed by the Service, the sample(s) on which the reinspection or appeal is determined, must (i) be obtained by an authorized employee of the Service or a licensed sampler under contract with the Service and not employed by an agency and (ii) otherwise meet the requirements of paragraph (a)(1) of this section. If the reinspection or appeal inspection performed by the Service is determined on the basis of official file sample(s), the samples must meet the requirements of § 800.82(d). A Board appeal lot inspection service shall be performed on the basis of the official file samples.

(4) *New sample.* Upon request of an applicant, and if practicable, a new sample shall be obtained and examined as a part of a reinspection or appeal inspection. The provision for new sample upon request of an applicant shall not apply if obtaining the new sample involves a change in method of sampling.

(b) *Representative sample.* No sample shall be considered representative of a lot of grain unless the sample (1) has been obtained by official personnel, (2) is of the size prescribed in the instructions, and (3) has been obtained, handled, and submitted in accordance with the instructions. A sample which fails to meet the requirements of this paragraph may, upon request of the applicant, be inspected as a submitted sample in accordance with § 800.76(d).

(c) *Protecting samples*—(1) *Official samples.* Official personnel and other employees of the Service and all agencies shall protect official samples from manipulation, substitution, and improper and careless handling which might deprive the samples of their representativeness from the time of sampling until inspection services are completed and file samples have been discarded.

(2) *Warehousemen's samples and submitted samples.* Official personnel and other employees of the Service and all agencies shall protect warehouseman's samples and submitted samples from manipulation, substitution, or improper or careless handling which might change the physical or chemical properties of the grain in the samples from the time the samples are received until inspection services are completed and the file samples have been discarded.

(d) *Restriction on sampling.* No agency or field office shall perform an original lot inspection service or a lot reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling. Upon request, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Disposition of samples*—(1) *Excess grain.* In sampling grain in lots, any grain in excess of the quantity specified in the instructions for the requested service, the required file samples, and samples requested by interested persons shall be returned to the lot from which the excess grain was obtained or to the order of the owner of the lot.

(2) *Inspection samples.* Inspection samples shall, after they have served their intended purpose, be disposed of as follows:

(i) Samples which contain toxic substances or materials shall be kept out of food and feed channels.

(ii) Samples obtained by or submitted to agencies may be returned to the order of the applicant at the applicant's expense or may be sold, donated, or destroyed by the agency. A complete and accurate record of the disposition shall be maintained by the agency.

(iii) Samples obtained by or submitted to field offices or the Board of Appeals and Review shall become the property of the Service and may be disposed of in accordance with procedures established by the Service.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

§ 800.82 Sampling provisions by level of service.

(a) *Original inspection service*—(1) *Official sample-lot inspection service.* Each original inspection service shall be performed on the basis of one or more official samples obtained by official personnel from grain in the lot and forwarded to the appropriate agency or field office.

(2) *Warehouseman's sample-lot inspection.* Each original warehouseman's sample-lot inspection service shall be performed on the basis of samples obtained by a licensed warehouseman and sent to the appropriate agency or field office in whose circuit the warehouse is located.

(3) *Submitted sample service.* Each original submitted sample inspection service shall be performed on the basis of the sample as submitted.

(b) *Reinspection, and appeal inspection services*—(1) *Official sample-lot inspection service.* Each of these inspection services shall be performed on the basis of official samples as available, including file samples, at the time the service is requested. In performing these services, a sample obtained with an approved diverter-type mechanical sampler or with a pelican sampler generally shall be used with respect to quality factors and official criteria, and a sample obtained with a probe at the time of the reinspection or appeal, generally, shall be used with respect to heating, musty, sour, insect infestation, and other condition and odor factors. In instances where original inspection results are based on samples obtained by probe, the decision as to whether file samples or new samples obtained by probe are to be used shall be made by the official personnel performing the service.

(2) *Warehouseman's sample-lot inspection service.* Each reinspection service and appeal inspection service on a warehouseman's sample shall be performed on an analysis of the official file sample.

(3) *Submitted sample service.* Each reinspection service and appeal inspection service on a submitted sample shall be performed on an analysis of the official file sample.

(c) *Board appeal inspection services.* Board appeal inspection services shall be performed on an analysis of the official file sample.

(d) *Use of file samples*—(1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions may be considered representative for a reinspection service, appeal inspection service, and a Board appeal inspection service if (i) the file sample has remained at all times in the custody and control of the official personnel that performed the inspection service in question; and (ii) the official personnel who performed the original inspection service and those who are to perform the reinspection, the appeal inspection, or the Board appeal inspection service determine that the samples were representative at the time the original inspection service was performed and that the quality or condition of the grain in the samples has not changed.

(2) *Certificate statement.* When the results of a reinspection, appeal inspection, or Board appeal inspection service are based on an official file sample, the certificate for the reinspection service, the appeal inspection service, and the Board appeal inspection service shall show a statement, as specified in the instructions, indicating that the results are based on the official file sample.

[50 FR 49670, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49670, Dec. 4, 1985, § 800.82 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.82 Sampling provisions by level of service.

(a) *Original inspection service*—(1) *Official sample-lot inspection service.* Each original inspection service on a lot of grain shall be made on the basis of one or more offical samples obtained from grain in the lot. In the case of an official sample-lot inspection service, the samples must be obtained and sent to the appropriate agency or field office by official personnel.

(2) *Warehouseman's sample-lot inspection.* In the case of a warehouseman's sample-lot inspection service, the samples must be obtained and sent to the appropriate agency or field office by a licensed warehouse sampler.

(3) *Submitted sample service.* Each original submitted sample inspection service shall be made on the basis of the grain in the sample as submitted.

(b) *Reinspection services and appeal inspection services*—(1) *Official sample-lot inspection service.* Each reinspection service and appeal inspection service on a lot of grain shall be made on the basis of the most representative official samples available, including file samples, at the time of the reinspection or appeal inspection service. In performing a reinspection or appeal inspection service, a sample obtained with an approved diverter-type mechanical sampler or with a pelican sampler shall generally be considered the most representative with respect to quality factors and official criteria, and a sample obtained with a probe at the time of the reinspection or appeal shall generally be considered the most representative with respect to heating, musty, sour, insect infestation, and other condition and odor factors. In instances where original inspection results are based on samples obtained by probe, the decision as to whether file samples or new samples obtained by probe are considered most representative shall be made by the official personnel performing the reinspection or appeal inspection service.

(2) *Warehouseman's sample-lot inspection service.* Each reinspection service and appeal inspection service on grain in a warehouseman's sample shall be based on an analysis of the official file sample.

(3) *Submitted sample service.* Each reinspection service and appeal inspection service on the grain in a submitted sample shall be based on an analysis of the official file sample.

(c) *Board appeal inspection service.* Each Board appeal inspection service performed on the grain in a lot or in a submitted sample shall be based on an analysis of the official file sample.

(d) *Use of file samples*—(1) *Requirements for use.* A file sample that is retained by an agency or field office in accordance with the procedures prescribed in the instructions may be considered representative for reinspection service, appeal inspection service, and Board appeal inspection service if (i) the file samples have remained at all times in the custody and control of the agency or the field office that performed the inspection service in question; and (ii) the official personnel who performed the inspection service in question and those who are to perform the reinspection, the appeal inspection, or the Board appeal inspection service believe that the samples were representative of the grain at the time of the inspection service in question and that the quality or condition of the grain in the samples has not since changed.

(2) *Certificate statement.* When the results of a reinspection, appeal inspection, or Board appeal inspection service are based on an official file sample, the certificate for the reinspection service, the appeal inspection service, and the Board appeal inspection service shall show the statement "Results based on official file sample."

§ 800.83 Sampling provisions by kind of movement.

(a) *Export cargo movements*—(1) *Bulk grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each inspection for official grade, official factor, or official criteria on an export cargo shipment of bulk grain shall be performed on official samples obtained from the grain (i) as the grain is being loaded aboard the final carrier; (ii) after the final elevation of the grain prior to loading and as near to the final loading spout as is physically practicable (except as approved by the Administrator when representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of a diverter-type mechanical sampler approved by the Service and operated in accordance with instructions. If an approved diverter-type mechanical sampler is not properly installed at an elevator or facility as required, each certificate issued at that elevator or facility for an export cargo shipment of bulk grain shall show a statement indicating the type of approved sampling method used, as prescribed in the instructions.

(2) *Sacked grain.* Each inspection for official grade, official factor, or official criteria on an export cargo shipment of sacked grain shall be performed on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with instructions.

(b) *Other movements.* Each inspection for official grade, official factor, or official criteria on a domestic cargo movement ("In," "Out," or en route barge movement), a movement in a land carrier (any movement in a railcar, truck trailer, truck/trailer combination, or container), or a "LOCAL" movement of bulk or sacked grain shall be performed on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions.

[50 FR 49670, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49670, Dec. 4, 1985, § 800.83 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.83 Sampling provisions by kind of movement.

(a) *Export cargo movements*—(1) *Bulk grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot inspection for official grade, official factor, or official criteria on an export cargo shipment of bulk grain shall be based on official samples obtained from the grain (i) as the grain is being loaded aboard the final carrier; (ii) after the final elevation of the grain prior to loading and as near to the final loading spout as is physically practicable (except as approved by the Administrator when representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of a diverter-type mechanical sampler approved by the Service and operated in accordance with instructions. If an approved diverter-type mechanical sampler is not properly installed at an elevator or facility as required, each certificate issued at that elevator or facility for an export cargo shipment of bulk grain shall show the following statement: "The lot of grain represented by this certificate was sampled by means of (*type of approved sampling method*). Samples obtained by this method may not be as representative as those obtained by approved diverter-type mechanical samplers."

(2) *Sacked grain.* Each lot inspection for official grade, official factor, or official criteria on an export cargo shipment of sacked grain shall be based on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with instructions.

(b) *Other movements.* Each lot inspection for official grade, official factor, or official criteria on a domestic cargo movement ("In," "Out," or en route barge movement), a movement in a land carrier (any movement in a railcar, truck, trailer, truck/trailer combination, or container), or a "LOCAL" movement of bulk or sacked grain shall be based on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions.

(Sec. 18, Pub. L. 94-582, 90 Stat. 2884 (7 U.S.C. 87e)).

[47 FR 54057, Dec. 1, 1982]

§ 800.84 Inspection of grain in land carriers, containers, and barges in single lots.

(a) *General.* The reinspection of bulk or sacked grain loaded or unloaded from any carrier or container, except shiplot grain, shall be conducted in accordance with the provisions in this section and procedures prescribed in the instructions.

(b) *Single and multiple grade procedure*—(1) *Single grade.* When grain in a carrier or container is offered for inspection as one lot and the grain is found to be uniform in condition, the grain shall be sampled, inspected, graded, and certificated as one lot. For the purpose of this paragraph, condition only includes the factors heating, musty, os sour.

(2) *Multiple grade.* When grain in a carrier or container is offered for inspection as one lot and the grain is found to be not uniform in condition because portions of the grain are heating, musty, or sour, the grain in each portion will be sampled, inspected, and graded separately; but the results shall be shown on one certificate. The certificate shall show the approximate quantity or weight of each portion, the location of each portion in the carrier or container, and the grade of the grain in each portion.

(3) *Infested.* If any portion of grain in a lot is found to be infested, according to applicable provisions of the Official U.S. Standards for Grain, the entire lot shall be considered infested. When grain in railcars or trucks with permanently enclosed tops is considered infested, the applicant for inspection shall be promptly notified and given the option of (i) receiving a grade certificate with a special grade designation indicating that the entire lot is infested or (ii) fumigating the grain in the lot in accordance with instructions and receiving a grade certificate without the special grade designation.

(c) *One certificate per carrier;, exceptions.* Except as provided in this paragraph, one official certificate shall be issued for the inspection of the grain in each truck, trailer, truck/trailer(s) combination, railcar, barge, or similarly sized carrier. The requirements of this paragraph are not applicable to (1) grain inspected in a combined lot under § 800.85 or (2) grain inspected under paragraph (d) of this section.

(d) *Bulkhead lots.* If grain in a carrier is offered for official inspection as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be sampled, inspected, and graded separately in accordance with paragraphs (a) and (b) of this section. An official certificate shall be issued for each lot inspected. Each certificate shall show the term "Bulkhead Lot," the approximate quantity or weight of the grain in the lot, the location of the lot in the carrier, and the grade of the grain in the lot.

(e) *Bottom not sampled.* If bulk grain offered for official inspection is at rest in a carrier or container and is fully accessible for sampling in an approved manner, except that the bottom of the carrier or container cannot be reached with each probe, the grain shall be sampled as thoroughly as possible with an approved probe. The grain in the resulting samples shall be inspected, graded, and certificated, except that each certificate shall show a statement, as specified in the instructions, indicating the depth probed. Any inspection which is based on a sample that does not represent the entire carrier or container does not meet the mandatory inspection requirements of section 5(a)(1) of the Act.

(f) *Partial inspection—heavily loaded*—(1) *General.* When an "In" movement of bulk grain is offered for inspection at rest in a carrier or container and is loaded in such a manner that it is possible to secure only door-probe or shallow-probe samples, the container shall be considered to be "heavily loaded," and the request for inspection either shall be dismissed or a partial inspection shall be made. If the request is for the inspection of an "Out" movement of grain, the request shall be dismissed on the grounds that the grain is not accessible for a correct "Out" inspection.

(2) *Certification procedure.* If a partial inspection is made, the grain will be sampled as thoroughly as possible with an approved probe and inspected, graded, and a "partial inspection—heavily loaded" certificate issued. The certificate shall show the words "Partial inspection—heavily loaded" in the space provided for remarks. The type of samples that were obtained shall be described in terms of "door probe" or "shallow probe."

(3) *Reinspection and appeal inspection procedure.* A request for a reinspection or an appeal inspection service on grain in a carrier or container that is certificated as "partial inspection—heavily loaded" shall be dismissed in accordance with § 800.48(a)(4).

(4) *Restriction.* No "partial inspection—heavily loaded" certificate shall be issued for sacked grain or any inspection other than the inspections described in paragraphs (f) (1) through (4) of this section and § 800.85(h)(2).

(g) *Part lots.* (1) *General.* If a portion of the grain in a carrier or container is removed, the grain that is removed and the grain remaining shall be considered separate lots. When an official inspection service is requested on either portion, the grain shall be sampled, inspected, graded, and a "part-lot" inspection certificate issued.

(2) *Grain remaining in carrier or container.* The certificate for grain remaining in a carrier or container shall show (i) the following completed statement: "Partly unloaded; results based on portion remaining in (show carrier or container identification)," (ii) the term "Part lot" following the quantity information, (iii) the identification of the carrier or container, and (iv) the estimated amount and location of the part lot.

(3) *Grain unloaded from carrier or container.* If grain is sampled by official personnel during unloading, the certificate for the grain that is unloaded shall show (i) the completed statement: "Part lot; results based on portion removed from (show carrier identification)" and (ii) the term "Part lot" following the quantity information. If the grain is not sampled by official personnel during unloading, the certificate may, upon request of the applicant, show a completed statement such as "Applicant states grain is ex-car ___" or "Applicant states grain is ex-barge ___," but the certificate shall not otherwise show a carrier or container identification or the term "Part lot."

(h) *Identification for compartmented cars.* The identification for compartments in a compartmented railcar shall, in the absence of readily visible markings, be stated in terms of the location of the grain in a compartment, with the first compartment at the brake end of the car being identified as B-1, and the remaining compartments being numbered consecutively towards the other end of the car.

[50 FR 49671, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49671, Dec. 4, 1985, § 800.84 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.84 Inspection of grain in land carriers, containers, and barges in single lots.

(a) *General.* The lot inspection of bulk or sacked grain loaded or unloaded from any carrier or container, except shiplot grain, shall be conducted in accordance with the provisions in this section and procedures prescribed in the instructions.

(b) *Single and multiple grade procedure*—(1) *Single grade.* If grain in a carrier or container is offered for official inspection as one lot and the grain is found to be uniform in condition, the grain shall be sampled, inspected, graded, and certificated as one lot. For the purpose of this paragraph, condition shall include only the factors heating, musty, and sour.

(2) *Multiple grade.* If grain in a carrier or container is offered for official inspection as one lot and the grain is found to be not uniform in condition because portions of the grain are heating, musty, or sour, the grain in each portion shall be sampled, inspected, and graded separately; but the results shall be shown on one certificate. The certificate shall show the approximate quantity or weight of each portion, the location of each portion in the carrier or container, and the grade of the grain in each portion, in accordance with procedures prescribed in the instructions.

(3) *Weevily.* If any portion of the grain in a lot is found to be weevily, as defined in the Official U.S. Standards for Grain, the entire lot shall be graded Weevily.

(c) *One certificate per carrier; exceptions.* Except as provided in this paragraph, one official certificate shall be issued for the official inspection of the grain in each truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. The requirements of this paragraph shall not be applicable to (1) grain inspected in a combined lot under § 800.85 or (2) grain inspected under paragraph (d) of this section.

(d) *Bulkhead lots.* If the grain in a carrier is offered for official inspection service as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be sampled, inspected, and graded as a separate lot in accordance with paragraphs (a) and (b) of this section. An official certificate shall be issued for each lot inspected. Each certificate shall show the term "Bulkhead Lot," the approximate quantity or weight of the grain in the lot, the location of the lot in the carrier, and the grade of the grain in the lot, in accordance with procedures prescribed in the instructions.

(e) *Bottom not sampled.* If bulk grain offered for official inspection service is at rest in a carrier or container and is fully accessible for sampling in an approved manner, except that the bottom of the carrier or container cannot be reached with each probe, the grain shall be sampled as thoroughly as possible with an approved probe. The grain in the resulting samples shall be inspected, graded, and certificated in accordance with the provisions of this section, except that each certificate shall show the following completed statement: "Top —— feet sampled. Bottom not sampled." A "Bottom not sampled" inspection does not meet the mandatory inspection requirements of section 5(a)(1) of the Act.

(f) *Partial inspection—heavily loaded*—(1) *General.* If an "In" movement or local lot of bulk grain is offered for official inspection at rest in a carrier or container and is loaded in such a manner that it is possible to secure only door-probe or shallow-probe samples of the lot, the container shall be considered to be "heavily loaded," and the request for inspection may be dismissed or a partial inspection may be made. If the request is for the inspection of an "Out" movement of grain, the request shall be dismissed on the ground that the grain is not accessible for a correct "Out" inspection.

(2) *Certification procedure.* If a partial inspection is made, the grain shall be sampled as thoroughly as possible with an approved probe and shall be inspected, graded, and certificated in accordance with the provisions of this section, except that a "partial inspection—heavily loaded" certificate shall be issued. The certificate shall show the words "Partial inspection—heavily loaded" in the space provided for remarks. The type of samples that were obtained shall be described in terms of "door probe" or "shallow probe."

(3) *Reinspection and appeal inspection procedure.* A request for a reinspection service or an appeal inspection service on grain in a container that is certificated as "partial inspection—heavily loaded" shall be dismissed in accordance with § 800.48(a)(4).

(4) *Restriction.* No "partial inspection—heavily loaded" inspection certificate shall be issued for sacked grain or for any inspection other than the inspections described in paragraphs (f) (1) through (4) of this section and § 800.85(h)(2).

(g) *Part lots*—(1) *General.* If a portion of the grain in a carrier or container is removed, the grain that is removed and the grain remaining shall be considered separate lots. If an official inspection service is requested on either portion, the grain shall be sampled, inspected, graded, and certificated in accordance with this section, except that a "part-lot" inspection certificate shall be issued.

(2) *Grain remaining in carrier or container.* The certificate for grain remaining in a carrier or container shall show (i) the following completed statement: "Partly unloaded; results based on portion remaining in (*show carrier or container identification*)" (ii) the term "Part lot" following the quantity information, (iii) the identification of the carrier or container, and (iv) the estimated amount and location of the part lot.

(3) *Grain unloaded from carrier or container.* If grain is sampled by official personnel during unloading, the certificate for the grain that is unloaded shall show (i) the completed statement: "Part lot; results based on portion removed from (*show carrier identification*)" and (ii) the term "Part lot" following the quantity information. If the grain is not sampled by official personnel during unloading, the certificate may, upon request of the applicant, show a completed statement such as "Applicant states grain is ex-car ——" or "Applicant states grain is ex-barge ——," but the certificate shall not otherwise show a carrier or container identification or the term "Part lot."

(h) *Identification for compartmented cars.* The identification for a part of a compartmented railroad car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compartment or bay, with the first bay at the brake end of the car being identified as B-1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

(Secs. 8, 9, 10, 14, 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2882, 2884; (7 U.S.C. 79, 79a, 79b, 84, 87a, 87e) and sec. 155, Pub. L. 97-35, 95 Stat. 371; (7 U.S.C. 79, 79a))

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36072, Sept. 14, 1984]

§ 800.85 Inspection of grain in combined lots.

(a) *General.* The official inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from two or more carriers or containers (including barges designed for loading aboard a ship) as a combined lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure*—(1) *For inspection during loading, unloading, or at rest.* Applications for official inspection of grain as a combined lot shall (i) be filed in accordance with § 800.116; (ii) show the estimated quantity of grain that is to be certificated as one lot; (iii) show the contract grade if applicable; and (iv) identify each carrier into which grain is being loaded or from which grain is being unloaded.

(2) *Recertification.* An application for recertification as a combined lot of grain that has been offiically inspected and certificated as two or more single lots shall (i) be filed not later than 2 business days after the latest inspection date of the single lots and (ii) show information specified in paragraph (b)(1) of this section.

(c) *Inspection procedure; general—land carriers and barges*—(1) *Inspection during loading, or unloading, or at rest.* Grain in two or more land carriers and barges that are to be officially inspected as a combined lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain in each individual carrier and inspected in accordance with procedures as prescribed in the instructions.

(2) *Recertification.* Grain that has been officially inspected and certificated as two or more single lots may be recertificated as a combined lot if (i) the grain in each lot was sampled in a reasonably continuous operation; (ii) the original inspection certificates issued for the single lots have been surrendered to official personnel; (iii) representative file samples of the single lots are available; (iv) the grain in the single lots is of one grade and quality; (v) official personnel who performed the inspection service for the single lots and those who are to recertificate the grain as a combined lot determine that the samples used as a basis for the inspection of the grain in the single lots were representative at the time of sampling and have not changed in quality or condition; and (vi) the quality or condition of the grain meets uniformity requirements established by the Service for official inspection of grain in combined lots.

(d) *Weighted or mathematical average.* Offical factor and official criteria information shown on a certificate for grain in a combined lot shall, subject to the provisions of paragraphs (e) through (g) of this section, be based on the weighted or mathematical averages of the analysis of the sublots in the lot and shall be determined in accordance with the instructions.

(e) *Infested grain.* If the grain in a combined lot is offered for official inspection as it is being loaded aboard a carrier and the grain, or a portion of the grain, in a lot is found to be infested, according to applicable provisions of the Official U.S. Standards for Grain, the applicant shall be notified and may exercise options specified in the instructions. When grain in railcars or trucks with permanently enclosed tops is considered infested, the applicant shall be given the option of (1) receiving a grade certificate with a special grade designation indicating that the entire lot is infested or (2) fumigating the grain in the lot in accordance with instructions and receiving a grade certificate without the special grade designation.

(f) *Grain uniform in quality.* Samples obtained from grain officially inspected as a combined lot shall be examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain is loaded aboard or is unloaded from the carriers in a reasonably continuous operation, the grain in the combined lot shall be officially inspected and certificated as one lot. The requirements of this paragraph (f) and paragraph (c) of this section with respect to reasonably continuous loading or unloading do not apply to grain which is at rest in carriers when the grain is offered for inspection.

(g) *Grain not uniform in quality.* When grain officially inspected as a combined lot is found to be not uniform in quality or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and any grain which is loaded or unloaded at different times, shall be officially sampled, inspected, graded, and certificated as single lots.

(h) *Special certification procedures.* (1) *Grain not uniform in quality.*

When grain in a combined lot is found to be not uniform in quality under paragraph (g) of this section, the official inspection certificate for each portion of different quality shall show (i) the grade, identification, and approximate quantity of the grain and (ii) other information required by the instructions.

(2) *Partial inspection.* When an inbound movement of bulk grain is offered for official inspection at rest as a combined lot and all carriers are not fully accessible for sampling, the request for official inspection either shall be dismissed or a combined lot inspection shall be made on those carriers that are accessible. Those lots that are not accessible shall be handled in accordance with § 800.84. If the request is for an official inspection service on an outbound movement of grain at rest in a combined lot, the request shall be dismissed on the ground that the grain is not accessible for a correct "Out" inspection.

(3) *Official mark.* If grain in a combined lot is inspected for grade as it is being loaded aboard two or more carriers, upon request of the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection" or "Loaded under continuous official inspection and weighing.

(4) *Combined-lot certification; general.* Each official certificate for a combined-lot inspection service shall show the identification for the "combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement "Carrier identification available on official inspection log" shall be shown on the inspection certificate in the space provided for remarks. The identification and any seal information for the carriers may be shown on the reverse side of the inspection certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(5) *Recertification.* If a request for a combined-lot inspection service is filed after the grain has been officially inspected and certificated as single lots, the combined-lot inspection certificate shall show (i) the date of inspection of the grain in the combined lot (if the single lots were inspected on different dates, the latest of the dates shall be shown); (ii) a serial number other than the serial numbers of the official inspection certificates that are to be superseded; (iii) the location of the grain, if at rest, or the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the approximate quantity of grain in the combined lot; (v) a completed statement showing the identification of any superseded certificates; and (vi) if at the time of issuing the combined-lot inspection certificate the superseded certificates are not in the custody of the official personnel, a statement indicating that the superseded certificates have not been surrendered shall be clearly shown in the space provided for remarks. If the superseded certificates are in the custody of official personnel, the superseded certificates shall be clearly marked "Void."

(i) *Further combining.* After a combined-lot inspection certificate has been issued, there shall be no further combining and no dividing of the certificate.

(j) *Limitation.* No combined-lot inspection certificate shall be issued (1) for any official inspection service other than as described in this section or (2) which shows a quantity of grain in excess of the quantity in the single lots.

[50 FR 49672, Dec. 4, 1985]

EFFECTIVE DATE NOTE: At 50 FR 49672, Dec. 4, 1985, § 800.85 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.85 Inspection of grain in combined lots.

(a) *General.* The official inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from two or more carriers or containers (including barges designed for loading aboard a ship) as a combined lot shall be in accordance with the provisions of this section and procedures prescribed in the instructions. For additional provisions regarding general certification requirements, see §§ 800.160, 800.161, and 800.162.

(b) *Application procedure*—(1) *For inspection during loading, or unloading, or at rest.* Applications for the inspection of grain as a combined lot shall (i) be filed in accordance with § 800.116; (ii) show the estimated quantity of grain that is to be certificated as one lot; (iii) show the contract grade if applicable; and (iv) identify each carrier into which grain is being loaded or from which grain is being unloaded.

(2) *Recertification.* An application for the recertification as a combined lot of grain that has been inspected and certificated in two or more single lots shall (i) be filed not later than 2 business days after the latest inspection date of the single lots and (ii) show information specified in paragraph (b)(1) of this section.

(c) *Inspection procedure; general—land carriers and barges*—(1) *Inspection during loading, or unloading, or at rest.* Grain in two or more land carriers and barges that is to be officially inspected as a combined lot shall be sampled in a reasonably continuous operation. Unless otherwise specified, representative samples must be obtained from the grain in each individual carrier and inspected in accordance with procedures as prescribed in the instructions.

(2) *Recertification.* Grain that has been officially inspected and certificated as two or more single lots may be recertificated as a combined lot if (i) the grain in each lot has been sampled in a reasonably continuous operation; (ii) the original inspection certificates issued for the single lots have been surrendered to the appropriate agency or field office; (iii) representative file samples of the single lots are available; (iv) the grain in the single lots is of one grade and quality; (v) the official personnel who performed the inspection service for the single lots and those who are to recertificate the grain as a combined lot must believe that the samples used as a basis for the inspection of the grain in the single lots were representative at the time of sampling and have not since changed in quality or condition; and (vi) the quality or condition of the grain meets the uniformity requirements established by the Service for inspection of grain in combined lots.

(d) *Weighted average.* Official factor and official criteria information shown on a certificate for grain in a combined lot shall, subject to the provisions of paragraphs (e) through (g) of this section, be based on the weighted averages of the analysis of the sublots in the lot and shall be determined in accordance with the instructions.

(e) *Weevily grain.* If the grain in a combined lot is offered for inspection as it is being loaded aboard a carrier and the grain, or a portion of the grain, is found to grade Weevily as defined in the Official U.S. Standards for Grain, the applicant shall be promptly notified and may exercise options specified in the instructions.

(f) *Grain uniform in quality.* Samples obtained from grain to be inspected as a combined lot shall be examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain is loaded aboard or is unloaded from the carriers in a reasonably continuous operation, the grain in the combined lot shall be inspected and certificated as one lot. (The requirements of this paragraphs (f) and (c) of this section with respect to reasonably continuous loading or unloading shall not apply to grain which is at rest in carriers when the grain is offered for inspection.)

(g) *Grain not uniform in quality.* If the grain to be officially inspected as a combined lot is found to be not uniform in quality or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and any grain which is loaded or unloaded at different times, shall be sampled, inspected, graded, and certificated as single lots.

(h) *Special certification procedures*—(1) *Grain not uniform in quality.* If grain in a combined lot is found to be not uniform in quality under paragraph (g) of this section, the inspection certificate for each portion of different quality shall show (i) the grade, identification, and approximate quantity of the grain and (ii) other information required in the instructions.

(2) *Partial inspection.* If an inbound movement of bulk grain is offered for inspection as a combined lot as the grain is at rest in two or more carriers and the grain is not fully accessible for sampling, the request for inspection may be dismissed or a combined lot inspection may be made on those lots that are found accessible. Those lots that are not accessible shall be handled in accordance with § 800.84(f). If the request is for inspection service on an outbound movement of grain in a combined lot, the request shall be dismissed on the ground that the grain is not accessible for a correct "OUT" inspection.

(3) *Official mark.* If the grain in a combined lot is officially inspected for grade as the grain is being loaded aboard two or more carriers, upon request by the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection" or "Loaded under continuous official inspection and weighing."

(4) *Combined-lot certification; general.* Each certificate for a combined-lot inspection service shall show the identification for the "combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement "Carrier identification available on official inspection log" shall be shown on the inspection certificate in the space provided for remarks. The identification and any seal in-

formation for the carriers may be shown on the reverse side of the inspection certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(5) *Recertification.* If a request for a combined-lot inspection service is filed after the grain in the single lots has been officially inspected and certificated, the combined-lot inspection certificate shall show: (i) The date of inspection of the grain in the combined lot (if the single lots were inspected on different dates, the latest of the dates shall be shown); (ii) a serial number other than the serial numbers of the inspection certificates that are to be superseded; (iii) the location of the grain, if at rest, or the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the approximate quantity of grain in the combined lot; (v) a completed statement showing the identification of any superseded certificates as follows: "This Combined-Lot certificate supersedes certificates Nos. ———, dated ———."; and (vi) if at the time of issuing the combined-lot inspection certificate the superseded certificates are not in the custody of the agency or field office, the statement "the superseded certificates identified herein have not been surrendered" shall be clearly shown in the space provided for remarks beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates shall be clearly marked "Void."

(i) *Further combining.* After a combined-lot inspection certificate has been issued, there shall be no further combining and no dividing of the certificate.

(j) *Limitation.* No combined-lot inspection certificate shall be issued (1) for any inspection service other than as described in this section or (2) which shows a quantity of grain in excess of the quantity in the single lots.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

§ 800.86 Inspection of shiplot grain in single lots.

(a) *General.* Official inspection for grade of bulk or sacked grain aboard, or being loaded aboard, or being unloaded from a ship as a single lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the official inspection of shiplot grain as a single lot shall (1) be filed in advance of loading or unloading; (2) show the estimated quantity of grain that is to be certificated; (3) show the contract grade if applicable; and (4) identify the carrier and the stowage area into which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(c) *Inspection procedure; general.* Shiplot grain being officially inspected as a single lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain offered for inspection and inspected and graded in accordance with procedures prescribed in the instructions.

(d) Weighted or mathematical average. Official factor and official criteria information shown on a certificate for shiplot grain shall, subject to the provisions of paragraphs (e) through (g) of this section, be based on the weighted or mathematical averages of the analysis of the sublots.

(e) *Infested grain*—(1) *Available options.* If grain or any portion of grain in a single shiplot is found to be infested, according to the provisions of the Official U.S. Standards for Grain, the applicant shall be promptly notified and have the option of (i) unloading the portion of infested grain from the lot and an additional amount of other grain in common stowage with the infested grain; or (ii) when applicable, completing the loading and the treating all the grain in the lot, or portion of the lot; or (iii) when applicable, treating the infested grain for the purpose of destroying the insects, subject to subsequent examination by official personnel; or (iv) continuing loading without treating the infested grain, in which case all of the infested grain in the lot and all grain in common stowage areas with the infested grain will be officially certificated as infested according to the provisions of the Official U.S. Standards for Grain. If, however, the infested grain is loaded into common stowage with a lot, or a portion of a lot, which has not been officially certificated as being infested, the applicant loading the infested grain may not use the option in paragraph (e)(1)(i) of this section.

(2) *With treatment.* If infested grain is treated with a fumigant in accord-

ance with the instructions and the treatment is witnessed by official personnel, the official sampling, inspection, grading, and certification of the lot shall continue as though the infested condition did not exist.

(f) *Grain uniform in quality.* Shiplot grain officially inspected as a single lot shall be examined for uniform quality. If the grain is found to be uniform in quality according to the rules of a specific loading plan established by instructions and is loaded aboard or is unloaded from the ship in a reasonably continuous operation, the grain in the lot shall be officially inspected, graded, and certificated as a single lot.

(g) *Grain not uniform in quality.* When the grain in a shiplot is found to be not uniform in quality according to the provisions of a specified loading plan established by the instructions or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and any grain which is loaded or unloaded at different times, shall be officially sampled, inspected, graded, and certificated separately.

(h) *Special certification procedures*—(1) *Grain not uniform in quality.* When grain in a single shiplot is found to be not uniform in quality under paragraph (g) of this section, the official inspection certificate for each different portion of different quality shall show (i) a statement that the grain has been loaded aboard with grain of other quality; (ii) the grade, location, or other identification and approximate quantity of the grain in the portions; and (iii) other information required by the regulations and the instructions. The requirements of paragraph (h)(1)(i) of this section do not apply to grain that is inspected as it is unloaded from a ship or to portions loaded in separate stowage space.

(2) *Common stowage*—(i) *Without separations.* When bulk grain is offered for official inspection as it is being loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the official inspection certificate for the grain in each lot shall show the kind, the grade, if known, and location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* When separations are laid between the lots, the official inspection certificates shall show the kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph are not applicable to the first lot in a stowage area unless a second lot is loaded, in whole or in part, in the stowage area prior to issuing the official inspection certificate for the first lot.

(3) *Inbound movement of shiplot grain.* Each lot inspection service for official grade, official factor, or official criteria on an inbound movement of shiplot grain shall be based on official samples obtained from the lot (i) as the grain is being unloaded from the carrier, (ii) immediately after initial elevation and as near as necessary to initial elevation to obtain a representative sample and to protect the grain flow, and (iii) by means of a diverter-type mechanical sampler approved by and operated in accordance with the instructions.

(4) *Part lot.* If part of a lot of grain in an inbound carrier is unloaded and part is left in the carrier, the unloaded grain shall be officially inspected and certificated in accordance with the provisions of § 800.84(g).

(5) *Official mark.* If the grain in a single shiplot is officially inspected for grade as it is being loaded aboard a ship, upon request, the following official mark shall be shown on the inspection certificate: "Loaded under continuous official inspection."

(i) *Reinspection service and appeal inspection service on a shiplot.* A reinspection service or an appeal inspection service may be obtained on either the total sublots in a shiplot or a material portion of the shiplot as prescribed in the instructions.

[50 FR 49673, Dec. 4, 1985]

Effective Date Note: At 50 FR 49673, Dec. 4, 1985, § 800.86 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.86 Inspection of shiplot grain in single lots.

(a) *General.* The official inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from a ship as a single lot shall be in accordance with the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the inspection of shiplot grain in a single lot shall (1) be filed in advance of loading or unloading any of the grain; (2) show the estimated quantity of grain that is to be certificated as one lot; (3) show the contract grade for the grain if applicable; and (4) identify the carrier and the stowage area into which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(c) *Inspection procedure; general.* Shiplot grain that is to be inspected as a single lot shall be sampled in a reasonably continuous operation. Unless otherwise specified in the instructions, representative samples must be obtained from the grain that is offered for inspection as a lot and shall be sampled, inspected, and graded in accordance with procedures prescribed in the instructions.

(d) *Weighted average.* Official factor and official criteria information shown on a certificate for shiplot grain in a single lot shall, subject to the provisions of paragraphs (e) through (g) of this section, be based on the weighted averages of the analysis of the sublots in the single lot and shall be determined in accordance with the instructions.

(e) *Weevily grain*—(1) *Available options.* If the grain in a single shiplot or a portion of the grain is found to grade Weevily, as defined in the Official U.S. Standards for Grain, the applicant shall be promptly notified and have the option of (i) unloading that portion of grain designated weevily from the lot and an additional amount of other grain in common stowage with the weevily grain as prescribed in the instructions; or (ii) when applicable, completing the loading and treating of all grain in the lot, or portion of the lot, in accordance with the instructions; or (iii) when applicable, treating the grain which graded Weevily for the purpose of destroying the insects, subject to subsequent examination by official personnel, in accordance with the instructions; or (iv) continuing loading without treating the grain that graded Weevily, in which case all of the weevily grain in the lot and all other grain in common stowage areas with the weevily grain shall be certificated as Weevily, in accordance with the instructions. If, however, the weevily grain is loaded into common stowage with a lot, or a portion of a lot, which has not been certificated as Weevily, the applicant loading the weevily grain may not use option paragraph (e)(1)(i) of this section.

(2) *With treatment.* If weevily grain is treated with a fumigant in accordance with the instructions and the treatment is witnessed by official personnel, the sampling, inspection, grading, and certification of the lot shall continue as though the weevily condition did not exist.

(f) *Grain uniform in quality.* Shiplot grain to be inspected as a single lot shall be examined for uniformity of quality. If the grain is found to be uniform in quality according to the rules of a specific loading plan established by instructions and is loaded aboard or is unloaded from the ship in a reasonably continuous operation, the grain in the lot shall be inspected, graded, and certificated as a single lot.

(g) *Grain not uniform in quality.* If the grain in a shiplot is found to be not uniform in quality according to the rules of a specified loading plan established by the instructions or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and any grain which is loaded or unloaded at different times, shall be sampled, inspected, graded, and certificated separately as single lots.

(h) *Special certification procedures*—(1) *Grain not uniform in quality.* If grain in a single shiplot is found to be not uniform in quality under paragraph (g) of this section, the inspection certificate for each different portion of different quality shall show (i) a statement that the grain has been loaded on board with grain of other quality; (ii) the grade, location, or other identification and approximate quantity of the grain in the portions; and (iii) other information required by the regulations and the instructions. The requirements of paragraph (h)(1)(i) of this section shall not apply to grain that is inspected as it is unloaded from a ship or to portions loaded in separate stowage space.

(2) *Common stowage*—(i) *Without separation.* If bulk grain is offered for inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the inspection certificate for the grain in each lot in the stowage area shall show the kind, the grade, if known, and the location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* If separations are laid between lots, the inspection certificates shall show the kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area prior to issuance of the official inspection certificate for the first lot.

(3) *Inbound movement of shiplot grain.* Each lot inspection service for official grade, official factor, or official criteria on an inbound movement of shiplot grain shall be based on samples obtained from the lot (i) as the grain is being unloaded from the carrier, (ii) immediately after initial elevation and as near as necessary to initial elevation to obtain a representative sample and to protect the grain flow, and (iii) by means of a diverter-type mechanical sampler approved by and operated in accordance with the instructions.

(4) *Part lot.* If part of a lot of grain in an inbound carrier is unloaded and part is left in the carrier, the unloaded grain shall be inspected and certificated in accordance with the provisions of § 800.84(g).

(5) *Official mark.* If the grain in a single shiplot is inspected for grade as the grain is being loaded aboard a ship, upon request by the applicant the following official mark shall be shown on the inspection certificate: "Loaded under continuous official inspection."

(i) *Reinspection service and appeal inspection service on a shiplot.* A reinspection service or an appeal inspection service may be obtained on either the total sublots in a shiplot or a material portion of the shiplot as prescribed in the instruction.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

§ 800.87 New inspections.

(a) *Identity lost.* An applicant may request official personnel to perform a new original inspection service on an identified lot of grain, or on an identified carrier or container, if the identity of the lot or the carrier or container has been lost.

(b) *Identity not lost.* If the identity of the grain or the carrier or container is not lost, a new original inspection shall not be performed on the same identified lot of grain or carrier or container in the same assigned area of responsiblity within 5 business days after the last official inspection.

[50 FR 49674, Dec. 4, 1985]

Effective Date Note: At 50 FR 49674, Dec. 4, 1985, § 800.87 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.87 New inspections.

(a) *Identity lost.* An applicant may request an agency or field office to perform a new original inspection service on an identified lot of grain, or on an identified carrier or container, if the identity of the lot or the carrier or container has been lost.

(b) *Identity not lost.* If the identity of the grain or of the container is not lost, no new original inspection may be performed on the same identified lot of grain or carrier or container in the same assigned area of responsibility within 5 business days after the last inspection.

§ 800.88 Loss of identity.

(a) *Lots.* The identity of a lot of grain shall be considered lost if (1) a portion of the grain is unloaded, transferred, or otherwise removed from the carrier or container in which the grain was located at the time of the original inspection; or (2) a portion of grain or other material, including an insecticide or fumigant, is added to the lot after the original inspection was performed, unless the addition of the insecticide or fumigant was performed in accordance with the regulations and the instructions. At the option of official personnel performing a reinspection, appeal inspection, or Board appeal inspection service, the identity of grain in a closed carrier or container shall be considered lost if the carrier or container is not sealed or if the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost when (1) the stowage area is cleaned, painted, treated, fumigated, or fitted after the original inspection was performed; or (2) the identification of the carrier or container has been changed since the original inspection was performed.

(c) *Submitted samples.* The identity of a submitted sample of grain shall be considered lost when (1) the identifying number, mark, or symbol for the sample is lost or destroyed or (2) the samples have not been retained and protected by official personnel as prescribed in the instructions.

[50 FR 49674, Dec. 4, 1985]

Effective Date Note: At 50 FR 49674, Dec. 4, 1985, § 800.88 was revised, effective January 3, 1986. For the convenience of the user, the superseded text appears as follows:

§ 800.88 Loss of identity.

(a) *Lots.* The identity of a lot of grain shall be considered lost if (1) a portion of the grain is unloaded, transferred, or otherwise removed from the carrier or container in which the grain was located at the time of the original inspection; or (2) a portion of grain or other material, including an insecticide or fumigant, is added to the lot after the original inspection was performed, unless the addition of the insecticide or fumigant was performed in accordance with the regulations and the instructions. At the option of official personnel performing a reinspection, appeal inspection, or Board appeal inspection service, the identity of grain in a closed carrier or container may be considered lost if the carrier or container is not sealed or if the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost if (1) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed; or (2) the identification of the carrier or container has been changed since the original inspection was performed.

(c) *Submitted samples.* The identity of a submitted sample of grain shall be considered lost if (1) the identifying number, mark, or symbol for the sample is lost or destroyed or (2) the sample has not been retained and protected by official personnel as prescribed in the instructions.

WEIGHING PROVISIONS AND PROCEDURES

§ 800.95 Methods and order of performing weighing services.

(a) *Methods.* (1) *General.* All Class X or Class Y weighing, checkweighing, checkloading, stowage examination, and other weighing services shall be performed with approved weighing equipment and in accordance with procedures prescribed in the regulations and the instructions.

(2) *Bulk grain.* Except as provided in § 800.97(e), weight determinations on bulk grain shall be based on an accurate weighing of all of the grain which is in or will be loaded into a carrier or container.

(3) *Sacked grain.* Weight determinations shall be based on weighing all of the sacked grain in a lot, or on a sampling and weighing of the grain in an official weight sample which is based on a proportionate or random representative sampling of the grain in the entire lot. If the entire lot is not available or accessible at the time of sampling, the request shall be withheld until the entire lot is available or accessible.

(4) *Review of weighing.* Determinations in a review of weighing service shall be based on an independent review of the weighing information and procedures. Any difference in results shall be considered to be a material error and requires the issuance of a corrected weight. No administrative, statistical, or other tolerance shall be used or applied in performing a review of weighing service.

(b) *Order of service.* Weighing services under the Act shall be performed, to the extent practicable, in the order in which requests for the service are received. Precedence shall be given to requests for weighing required by sections 5(a)(1) or 5(a)(2) of the Act. Precedence may be given to other kinds of services under the Act with the specific approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or on behalf of an applicant for weighing service shall be promptly stamped or similarly marked by the agency or field office to show the date of receipt.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

§ 800.96 Weighing procedures.

(a) *General.* All balancing of scales, weighing of grain or grain containers, recording of weights, stowage examinations, and related activities shall be performed in accordance with the regulations and the instructions.

(1) *Class X weighing.* Class X weighing services may be performed by official personnel or by approved weighers employed by or at an approved weighing facility. Any services that are not performed in whole by official personnel must be completely supervised by official personnel.

(2) *Class Y weighing.* Class Y weighing services may be performed by official personnel or by approved weighers employed by or at an approved weighing facility and shall be partially or completely supervised by official personnel as specified by the Service.

(b) *Spills of grain*—(1) *Estimating spills.* When practicable, the weight of a grain spill or leak shall be determined by retrieving and weighing the grain; otherwise, the weight shall be determined by using (i) standard estimating formulas for grain volumes or (ii) other methods prescribed in the instructions.

(2) *Spills of outbound grain that are replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain has retained its quality and is retrieved, or is replaced in kind and quality, and is loaded on board during the loading operations, the weight certificate shall show the weight of the grain that was physically loaded on board. Upon request of the applicant, an additional certificate may be issued by the agency or the field office to show the weight of the additional grain that was used to replace a spill.

(3) *Spills of outbound grain that are not replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain is not retrieved or is not replaced during the loading operation, the official weight certificate shall show the weight of the grain that was actually loaded, excluding the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated amount of grain that was spilled. The applicant may, upon request, have the total amount that was weighed shown on the certificate with the estimated amount of the spill noted in the "Remarks" section of the certificate.

(4) *Spills or loss of identity of inbound grain*—(i) *Spills.* Except as provided in paragraph (c) of this section, if a spill or other avoidable loss occurs in the handling of an inbound lot of grain and is not retrieved and weighed as a part of the inbound lot, the weight certificate for the lot shall show the weight of the grain that was actually unloaded from the carrier. A statement regarding the spill or other avoidable loss shall be placed in the "Remarks" section of the certificate as prescribed in the instructions.

(ii) *Loss of identity.* For the purposes of this section, the identity of a lot of inbound grain shall be considered lost if the grain becomes mixed with other grain (other than grain from another identified carrier or container), related commodities, or other products during unloading and weighing. When loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot.

(c) *Commingled carriers or containers.* If grain from two or more identified carriers or containers becomes mixed, (i) the combined weight of the grain shall be shown in the Net Weight block of one certificate with all carrier identification shown in the identification of carrier section of the certificate, or (ii) upon the request of the applicant, a certificate shall be issued for each carrier with the Net Weight block crossed out, and the remarks sections shall show the total combined weight unloaded and the identification of the other carrier(s) or container(s).

(d) *Other avoidable losses on inbound grain.* If after unloading an inbound carrier or container sound grain remains in the carrier that could have been removed with reasonable effort, the weight of the grain that was actually unloaded from the carrier or container shall be shown on the weight certificate in accordance with paragraph (b)(1) of this section, and a statement regarding the grain remaining in the carrier or container shall be placed in the "Remarks" section of the certificate as may be prescribed in the instructions.

§ 800.97 Weighing of bulk grain in containers, land carriers, and barges in single lots.

(a) *General.* The weighing of bulk grain loaded or unloaded from any carrier or container, except shiplots, shall be conducted in accordance with the provisions in this section and procedures prescribed in the instructions.

(b) *Single and multiple weighing procedures*—(1) *Single procedure.* If grain in a carrier or a container is offered for inspection or weighing service as one lot and the grain is found to be uniform in condition, the grain shall be weighed and certificated as one lot. The identification of the carrier or container shall be recorded on the scale tape or scale ticket and the weight certificate.

(2) *Multiple procedure.* If a portion of the grain in an inbound carrier or a container is found to be not uniform in condition and the grain is unloaded in separate portions during one unloading process, the grain in each por-

tion shall be weighed as a separate lot; but the separate lots shall be certificated on one weight certificate. The certificate shall show the weight of each portion and its location in the carrier or container, in accordance with procedures prescribed in the instructions. If all the grain is unloaded as one lot, the grain shall be weighed as one lot in accordance with paragraph (b)(1) of this section. If only a part of the grain is unloaded, the grain shall be weighed in accordance with paragraph (e) of this section.

(c) *One certificate per carrier; exceptions.* Except as provided in this paragraph, one official certificate shall be issued for the weighing of the grain in each truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. These requirements shall not be applicable to (1) grain weighed as a combined lot under § 800.98 or (2) grain weighed under paragraph (b)(2) and paragraphs (d) and (e)(1) and (2) of this section.

(d) *Bulkhead lots.* If the grain in a carrier or container is offered for weighing service as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be weighed as a separate lot in accordance with paragraphs (a) and (b) of this section. An official certificate shall be issued for each lot weighed. Each certificate shall show the weight of the grain in the lot and the location of the lot in the carrier or container in accordance with procedures prescribed in the instructions.

(e) *Part lots*—(1) *Separate lots.* If the portion of a lot of grain in an inbound carrier or container is unloaded, and a portion is left in the carrier or container because it is not uniform in quality or condition, or is unloaded in other than a reasonably continuous operation, the portion that is removed and the portion remaining in the carrier or container shall be considered separate lots. If weighing service is requested on either portion, the grain shall be weighed and certificated in accordance with paragraph (b)(2) of this section, except that a "part-lot" weight certificate shall be issued.

(2) *Part-lot weight certificate.* A part-lot weight certificate shall show (i) the weight of the portion that is unloaded and (ii) in the "Remarks" section of the certificate the statement: "Part-lot: The net weight stated herein reflects a partial unload."

(f) *Identification for compartmented cars.* The identification for a part of a compartmented railroad car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compartment or bay with the first bay at the brake end of the car being identified as B-1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

§ 800.98 Weighing of grain in combined lots.

(a) *General.* The weighing of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from two or more carriers or containers as a combined lot shall be in accordance with the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure*—(1) *For weighing during loading or unloading.* Applications for the weighing of grain in a combined lot shall (i) be filed in advance of the loading or unloading of any of the grain, (ii) show the estimated quantity of grain that is to be certificated as one lot, and (iii) identify each carrier in which grain is being loaded or from which grain is being unloaded.

(2) *Recertification.* An application for the recertification as a combined lot of grain that has been weighed and certificated as two or more single lots shall (i) be filed not later than 2 business days after the latest weighing date of the single lots and (ii) show the information specified in paragraph (b)(1) of this section.

(c) *Weighing procedure; general*—(1) *Single lot weighing.* Single lots of grain that are to be weighed as a combined lot shall be weighed in one location. The grain loaded into or unloaded from each carrier or container must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample must be obtained from the grain in each carrier or container unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certificated as two or more single lots may be recertificated as a combined lot provided that (i) the grain in each single lot has been weighed in one location, (ii) the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, (iii) the official personnel who performed the weighing service for the single lots and the official personnel who are to recertificate the grain as a combined lot believe that the weight of the grain in the lots has not since changed and, in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

(d) *Grain uniform in quality.* An applicant may request that grain be weighed and certificated as a combined lot whether or not the grain is uniform in quality for the purposes of inspection under the Act.

(e) *Special certification procedures*—(1) *Part lot.* If a part of a combined lot of grain in inbound carriers is unloaded and a part is left in the carriers, the grain that is unloaded shall be weighed and certificated in accordance with the provisions in § 800.97(e).

(2) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following mark shall be shown on the weight certificate: "Loaded under continuous official weighing," or "Loaded under continuous official inspection and weighing."

(3) *Combined-lot certification (general).* Each certificate for a combined-lot Class X or Class Y weighing service shall show the identification for the "Combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the reverse side of the weight certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(4) *Recertification.* If a request for a combined-lot Class X or Class Y weighing service is filed after the grain in the single lots has been weighed and certificated, the combined-lot weighing certificate shall show:

(i) The date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest of the dates shall be shown); (ii) a serial number, other than the serial numbers of the weight certificates that are to be superseded; (iii) the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the weight of the grain in the combined lot; (v) a completed statement showing the identification of any superseded certificate as follows: "This combined-lot certificate supersedes certificates Nos. ——, dated ——"; and (vi) if at the time of issuing the combined-lot weight certificate the superseded certificates are not in the custody of the agency or field office, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown, in the space provided for remarks, beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates shall be clearly marked "Void."

(f) *Further combining.* After a combined-lot weight certificate has been issued, there shall be no further combining and no dividing of the certificate.

(g) *Limitation.* No combined-lot weight certificate shall be issued (1) for any weighing service other than as described in this section or (2) which shows a weight of grain different from the total of the combined single lots.

(Approved by the Office of Management and Budget under control number 0580-0003)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453, Sept. 29, 1983]

§ 800.99 Weighing of shiplot grain in single lots.

(a) *General.* The weighing of bulk or sacked grain being loaded aboard or unloaded from a ship as a single lot shall be in accordance with the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the weighing of shiplot grain as a single lot shall (1) be filed in advance of loading or unloading of any of the grain, (2) show the estimated quantity of grain to be certificated as one lot, and (3) identify the carrier and the stowage area into which the grain is being loaded or from which the grain is being unloaded.

(c) *Weighing procedure; general.* Shiplot grain that is to be weighed as a single lot shall be weighed in one location. The grain in each lot must be weighed in accordance with procedures prescribed in the instructions and, in the case of sacked grain, must be weighed in its entirety, or a representative weight sample or samples must be obtained from the grain in each portion that is submitted for weighing as a lot, unless otherwise specified in the instructions.

(d) *Certification of shiplot grain*—(1) *Basic requirement.* The certificate shall show (i) if true, a statement that the grain has been loaded aboard with other grain, (ii) the official weight, (iii) the stowage or other identification of the grain, and (iv) other information required by the regulations and the instructions.

(2) *Common stowage*—(i) *Without separation.* If bulk grain is offered for weighing as it is being loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot shall show (A) that the lot was loaded on board with other grain or another commodity without separation, and (B) the relative location of the grain.

(ii) *With separation.* If separations are laid between adjacent lots, the weight certificates shall show the kind of material used in the separations and the location of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area before issuing the official weight certificate for the first lot.

(3) *Not accessible grain; sacked grain.* Except as provided in paragraph (d)(4) of this section, if an inbound or outbound movement of sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed.

(4) *Official mark.* If the grain in a single shiplot is officially weighed in one continuous operation as the grain is being loaded aboard a ship, upon request by the applicant, the following mark shall be shown on the official weight certificate: "Loaded under continuous official weighing."

(Approved by the Office of Management and Budget under control number 0580-0003)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453, Sept. 29, 1983]

§ 800.100 Official weight sample provisions for checkweighing sacked grain.

(a) *Requirements for official weight sample.* An official weight sample shall be (1) obtained from the sacked grain in the lot by official personnel; (2) representative of the grain in the lot, as specified in paragraph (b) of this section; (3) protected from manipulation, substitution, and improper or careless handling, as specified in paragraph (c) of this section; and (4) obtained within prescribed geographic boundaries, as specified in paragraph (d) of this section.

(b) *Representative sample.* No official weight sample shall be considered to be representative of a lot of sacked grain unless the sample (1) is of the size prescribed in the instructions and (2) has been obtained and weighed in accordance with procedures prescribed in the instructions.

(c) *Protecting samples and data.* Official personnel and other employees of an agency or the Service shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the samples and sample data of their representativeness.

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency. Upon request, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Equipment and labor.* Each applicant for weighing services shall provide the necessary labor for obtaining official weight samples and placing them in a position for weighing and shall supply suitable weighing equipment approved by the Service.

(f) *Disposition of official weight samples.* In weighing sack grain in lots, the grain in the official weight samples shall be returned to the lots from which the samples were obtained.

§ 800.101 Checkweighing sampling provisions by level of service.

Each checkweighing service performed on a lot of sacked grain to determine the weight of the grain shall be made on the basis of one or more official weight samples obtained from the grain by official personnel in accordance with the instructions.

§ 800.102 Official checkweighing sampling provisions by kind of movement.

(a) *"IN" movements.* Each checkweighing on an "IN" movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest in the carrier or container, or during unloading, in accordance with procedures prescribed in the instructions.

(b) *"OUT" movements (export).* Each checkweighing of sacked export grain shall be based on an official weight sample obtained (1) as the grain is being loaded aboard the final carrier, (2) as the grain is being sacked, or (3) while the grain is at rest in a warehouse or holding facility in accordance with the instructions.

(c) *"OUT" movements (other than export).* Each checkweighing of an "OUT" movement of nonexport sacked grain shall be based on an official weight sample obtained (1) from the grain as the grain is being loaded in the carrier or container, or (2) while the grain is at rest in the carrier and container, or (3) while the grain is at rest in a warehouse or holding facility, or (4) while the grain is being sacked, in accordance with procedures prescribed in the instructions.

(d) *"LOCAL" weighing.* Each checkweighing of a "LOCAL" movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest or while the grain is being transferred, in accordance with procedures prescribed in the instructions.

§ 800.103 Restricted weighing activities.

(a) *Misuse of equipment.* Grain weighing equipment and grain handling systems that relate to the weighing of grain shall not be operated other than in accordance with instructions supplied by the manufacturer of the equipment and the instructions.

(b) *Modification of equipment.* Modifications or changes in grain weighing equipment and grain handling systems that relate to the weighing of grain shall not be made without advance approval of the agency or field office servicing the elevator.

(c) *Addition of insecticides.* (1) *General prohibition.* No insecticide or insecticide mixture shall be added to outbound grain prior to weighing after final elevation for loading into a carrier.

(2) *Exception.* The provisions of this section shall not apply to outbound weighing at any approved weighing facility which on the effective date of these regulations has installed accurate metering devices approved by the Service on a case-by-case basis to measure insecticide or insecticide mixture added to the grain prior to weighing. At the option of the elevator, the weight of the insecticide or insecticide mixture shall be: (i) Replaced by a like weight of grain, (ii) subtracted from the net weight of the grain, or (iii) indicated in the "Remarks" section of the certificate as having been included in the net weight of the grain loaded into the carrier.

(d) *Processing of weighed grain*—(1) *General prohibition.* Except as noted in paragraph (d)(2) of this section, outbound grain that has been weighed shall be routed directly from the scale to the carrier or container and shall not be cleaned, dried, or otherwise processed to remove or add other grain or material enroute. Inbound grain that is to be weighed shall be routed directly from the carrier or container to the scale and shall not be cleaned, dried, or otherwise processed to remove or add other grain or material enroute.

(2) *Exception*—(i) *Insecticides.* An insecticide may be added to outbound grain after the grain has been weighed, and may be added to inbound grain before the grain has been weighed, in accordance with the instructions.

(ii) *Dust.* The routine removal of airborne dust during the handling of grain shall not be considered to be a removal of material.

ORIGINAL SERVICES

§ 800.115 Who may request original services.

(a) *General.* Any interested person may request original inspection and weighing services. The kinds of inspection and weighing services are described in § 800.75.

(b) *Class Y weighing services.* A request for Class Y weighing services at an export elevator at an export port location shall cover all lots shipped or received in a specific type of carrier. At all other elevators, the request shall cover all lots shipped from or to a specific location in a specific type of carrier. Each request shall be for a contract period of at least 3 months, but a facility may, upon satisfactory notification, exempt specific unit trains from the request.

(c) *Contract services.* Any interested person may enter into a contract with an agency or the Service whereby the agency or Service will provide original services for a specified period and the applicant will pay a specified fee.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580–0012)

[50 FR 45393, Oct. 31, 1985]

§ 800.116 How to request original services.

(a) *General.* Requests shall be filed with the agency or field office responsible for the areas in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If at the time the request is filed, the information specified by § 800.46 is not available official personnel may at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless (1) the information as required by § 800.46 has been submitted or (2) official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Requests for original services, other than submitted sample inspections, must be made with the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when the request is received by official personnel. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580–0012)

[50 FR 45393, Oct. 31, 1985]

§ 800.117 Who shall perform.

Original services shall be performed by the agency or field office assigned the area in which the service will be provided.

[50 FR 45393, Oct. 31, 1985]

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office.

[50 FR 45393, Oct. 31, 1985]

OFFICIAL REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

§ 800.125 Who may request reinspection services or review of weighing services.

(a) *General.* Any interested person may request a reinspection or review of weighing service. Only one reinspection or review of weighing service may be performed on any original service. When more than one interested person requests a reinspection or review of weighing service, the first person to file is the applicant of record.

(b) *Kind and scope of request.* The kind and scope of a reinspection or review of weighing service will be limited to the kind and scope of the original service. If the request specifies a different kind or scope, the request will be dismissed. The request may be resubmitted as a request for original services. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate. Reinspections for grade shall include a review of all official factors that (1) may determine the grade; or (2) are reported on the original certificate; and (3) are required to be shown.

[50 FR 45393, Oct. 31, 1985]

§ 800.126 How to request reinspection or review of weighing services.

(a) *General.* Requests shall be made with the agency or field office that performed the original service. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel. Copies of request forms may be obtained from the agency or field office. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold services pending the receipt of the required documentation. A reinspection certificate or the results of a review of weighing service shall not be issued unless (1) the documentation requested under § 800.46 has been submitted or (2) official personnel determine sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available shall be included in the record of the official service.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests.

(1) *Reinspection services.* Requests shall be received (i) before the grain has left the specified service point where the grain was located when the original inspection was performed; (ii) no later than the close of business on the second business day following the date of the original inspection; and (iii) before the identity of the grain has been lost. If a representative file sample, as prescribed in § 800.82, is available, official personnel may waive the requirements pursuant to this subparagraph. The requirements of paragraph (b)(1)(i) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraph (b)(1) (ii) and (iii) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(1)(ii) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that be-

cause of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the reinspection service.

(2) *Review of weighing services.* Requests shall be received no later than 90 calendar days after the date of the original Class X or Class Y weighing service.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45394, Oct. 31, 1985]

§ 800.127 Who shall perform reinspection or review of weighing services.

Reinspection or review of weighing services shall be performed by the agency or field office that performed the original service.

[50 FR 45394, Oct. 31, 1985]

§ 800.128 Conflicts of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for a reinspection or a review of weighing service if they participated in the original service unless there is only one qualified person available at the time and place of the reinspection or review of weighing.

[50 FR 45394, Oct. 31, 1985]

§ 800.129 Certificating reinspection and review of weighing results.

(a) *General.* Except as provided in paragraph (a)(1) of this paragraph, official certificates shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (b)(2) of this section, only the result of the reinspection service shall be reported.

(1) *Results of sublots.* When results of a reinspection on a sublot involved in a material portion are within the tolerance of a specified inspection plan, they shall replace the original inspection results. Certificates for the original inspection and reinspection services shall not be issued unless requested by the applicant or deemed necessary by official personnel. The results, however, shall be recorded on the inspection log and used to determine the weighted/mathematical average of the lot.

(2) *Reporting review of weighing results.* When the review of weighing service results indicate that the original weighing results were correct, the applicant will be notified in writing. When the original weighing service results are incorrect, a corrected weight certificate or, if applicable, a corrected combination inspection and Class X weight certificate will be issued according to the provisions of § 800.165.

(b) *Required statements on reinspection certificates.* Each reinspection certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each reinspection certificate must clearly show (i) the term "Reinspection" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the reinspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the reinspection certificate shall show a statement indicating that the reinspection results are based on official grade, or official factors, or official criteria and that all other results are those of the original service.

(3) If the superseded certificate is in the custody of the agency or field office, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the agency or field office at the time the reinspection certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the reinspection certificate.

(4) As of the date of issuance of the official certificate, the superseded certificate for the original service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (a)(1) of this section, the reinspection certificate shall show a statement indicating that the results replaced the original results and that the reinspection certificate is not valid for trading purposes.

[50 FR 45394, Oct. 31, 1985]

APPEAL INSPECTION SERVICES

§ 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services. When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

(b) *Kind and scope of request.* The kind and scope of an appeal inspection service will be limited to the kind and scope of the original inspection, or reinspection, or, in the case of a Board appeal inspection service, the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed. It may, however, be resubmitted as a request for original services. Official criteria is considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate. An appeal inspection for grade shall include a review of all official factors that (1) may determine the grade; or (2) are reported on the original, reinspection, or in the case of a Board appeal inspection, the appeal inspection certificate; and (3) are required to be shown on a certificate of grade.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45395, Oct. 31, 1985]

§ 800.136 How to request appeal inspection services.

(a) *General.* Requests shall be filed with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be filed with the Board of Appeals and Review or the field office that performed the appeal inspection. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel as specified in § 800.46. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation. An appeal inspection certificate will not be issued unless (1) documentation requested under § 800.46 has been submitted or (2) office personnel determine that sufficient information has been made available so as to perform the request. A record that sufficient information has been made available must be included in the record of the official service.

(b) *Filing requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests. Requests must be filed (1) before the grain has left the specified service point where the grain was located when the original inspection was performed, (2) no later than the close of business on the second business day following the date of the last inspection, and (3) before the identity of the grain has been lost. If a representative file sample as prescribed in § 800.82 is available, official personnel may waive the requirements pursuant to this paragraph. The requirements of paragraph (b)(1) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraphs (b)(2) and (3) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(2) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the appeal inspection service.

[50 FR 45395, Oct. 31, 1985]

§ 800.137 Who shall perform appeal inspection services.

(a) *Appeal.* Appeal inspection services shall be performed by the field office responsible for the area in which the original inspection was performed.

(b) *Board appeal.* Board appeal inspection services shall be performed only by the Board of Appeals and Review. The field office that performed the appeal inspection service will act as a liaison between the Board of Appeals and Review and the applicant.

[50 FR 45395, Oct. 31, 1985]

§ 800.138 Conflict of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for an appeal inspection if they participated in the original inspection, reinspection, or, in the case of a Board appeal inspection, the appeal inspection service unless there is only one qualified person available at the time and place of the appeal inspection.

[50 FR 45395, Oct. 31, 1985]

§ 800.139 Certificating appeal inspections.

(a) *General.* Except as provided in paragraphs (b) of this section, official certificate shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (c)(2) of this section, only the results of the appeal inspection service shall be reported.

(b) *Result of sublots.* When the results of an appeal inspection on a sublot involved in a material portion are within the tolerance of a specified inspection plan, they will replace the original inspection, reinspection, or appeal inspection results. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel. The results shall be recorded on the inspection log and used to determine the weighted/mathematical average of the lot.

(c) *Required statements.* Each appeal certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each appeal inspection certificate shall clearly show (i) the term "Appeal" or "Board appeal" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the appeal inspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the appeal inspection certificate shall show a statement indicating that appeal or Board appeal inspection results are based on official grade, official factors, or official criteria and that all other results are those of the original, reinspection, or, in the case of a Board appeal, the appeal inspection results.

(3) Superseded certificates held by the Service shall be marked "Void." If the superseded certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(4) As of the date of issuance of the appeal or Board appeal certificate, the superseded certificate for the original, reinspection, or appeal inspection service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (b) of this section, the appeal inspection certificate shall show a statement indicating that the results replace the original inspection, reinspection, or, in the case of a Board appeal, the appeal inspection results and that the appeal inspection certificate is not valid for trading purposes.

(d) *Finality of Board appeal inspections.* A Board appeal inspection will be the final appeal inspection service.

[50 FR 45395, Oct. 31, 1985]

OFFICIAL RECORDS AND FORMS (GENERAL)

SOURCE: Sections 800.145 through 800.159 appear at 50 FR 18986, May 6, 1985.

§ 800.145 Maintenance and retention of records—general requirements.

(a) *Preparing and maintaining records.* The records specified in §§ 800.146—800.159 shall be prepared and maintained in a manner that will facilitate (1) the daily use of records and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions.

(b) *Retaining records.* Records shall be retained for a period not less than that specified in §§ 800.146—800.159. In specific instances, the Administrator may require that records be retained for a period of not more than 3 years in addition to the specified retention period. In addition, records may be kept for a longer time than the specified retention period at the option of the agency, the contractor, the approved scale testing organization, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.146 Maintenance and retention of records issued by the Service under the Act.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of the Act, regulations, the standards, any instructions issued by the Service, and all amendments and revisions thereto. These records shall be maintained until superseded or revoked.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of their delegation, designation, contract, or approval. These records consist of a copy of the delegation or designation documents, a copy of the current contract, or a copy of the notice of approval, respectively, and all amendments and revisions thereto. These records shall be maintained until superseded, terminated, revoked, or cancelled.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.148 Maintenance and retention of records on organization, staffing, and budget.

(a) *Organization.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their organization. These records shall consist of the following documents: (1) If it is a business organization, the location of its principal office; (2) if it is a corporation, a copy of the articles of incorporation, the names and addresses of officers and directors, and the names and addresses of shareholders; (3) if it is a partnership or an unincorporated association, the names and addresses of officers and members, and a copy of the partnership agreement or charter; and (4) if it is an individual, the individual's place of residence. These records shall be maintained for 5 years.

(b) *Staffing.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their employees. These records consist of (1) the name of each current employee, (2) each employee's principal duty, (3) each employee's principal duty station, (4) information about the training that each employee has received, and (5) related information required by the Service. These records shall be maintained for 5 years.

(c) *Budget.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their budget. These records consist of actual income generated and actual expenses incurred during the current year. Complete accounts for receipts from (1) official inspection, weighing, equipment testing, and related services; (2) the sale of grain samples; and (3) disbursements from receipts shall be available for use in establishing or revising fees for services under the

Act. Budget records shall also include detailed information on the disposition of grain samples obtained under the Act. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.149 Maintenance and retention of records on licenses and approvals.

(a) *Licenses.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of licenses. These records consist of current information showing (1) the name of each licensee, (2) the scope of each license, (3) the termination date of each license, and (4) related information required by the Service. These records shall be maintained for the tenure of the licensee.

(b) *Approvals.* Agencies shall maintain complete records of approvals of weighers. These records consist of current information showing the name of each approved weigher employed by or at each approved weighing facility in the area of responsibility assigned to an agency or field office. These records shall be maintained for the tenure of the weigher's employment as an approved weigher.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.150 Maintenance and retention of records on fee schedules.

Agencies, contractors, and approved scale testing organizations shall maintain complete records on fee schedules. These records consist of (a) a copy of the current fee schedule; (b) in the case of an agency, data showing how the fees in the schedule were developed; (c) superseded fee schedules; and (d) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.151 Maintenance and retention of records on space and equipment.

(a) *Space.* Agencies shall maintain complete records on space. These records consist of (1) a description of space that is occupied or used at each location, (2) the name and address of the owner of the space, (3) financial arrangements for the space, and (4) related information required by the Service. These records shall be maintained for 5 years.

(b) *Equipment.* Agencies shall maintain complete records on equipment. These records consist of (1) the description of each piece of equipment used in performing official inspection or Class X or Class Y weighing services under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for equipment testing and the results of the testing, and (5) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.152 Maintenance and retention of file samples.

(a) *General.* The Service and agencies shall maintain complete file samples for their minimum retention period (calendar days) after the official function was completed or the results otherwise reported.

(b) *Minimum retention period.*

(1) Trucks	
In	3
Out	5
(2) Railcars	
In	5
Out	10
(3) Barges (river)	
In	5
Out	25
(4) Ships and barges (lake or ocean)	
In	5
Out	25
Export (sublot samples)	60
(5) Bins and tanks	3
(6) Submitted samples	3

Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

(c) *Special retention periods.* In specific instances, the Administrator may require that file samples be retained for a period of not more than 90 calendar days. File samples may be kept for a longer time than the regular retention period at the option of the Service, the agency, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.

Agencies and approved scale testing organizations shall maintain complete detailed official inspection work records, copies of official certificates, and equipment testing work records for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011.)

§ 800.154 Availability of official records.

(a) *Availability to officials.* Each agency, contractor, and approved scale testing organization shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to and to copy, without charge, during customary business hours any records maintained under §§ 800.146-.159.

(b) *Availability to the public*—(1) *Agency, contractor, and approved scale testing organization records.* The following official records will be available, upon request by any person, for public inspection during customary business hours: (i) Copies of the Act, the regulations, the standards, and the instructions; (ii) the delegation, designation, contract, or approval issued by the Service; (iii) organization and staffing records; (iv) a list of licenses and approvals; and (v) the approved fee schedule of the agency, if applicable.

(2) *Service records*—Records of the Service are available in accordance with the Freedom of Information Act (5 U.S.C. 552(a)(3)) and the regulations of the Secretary of Agriculture (7 CFR, Part 1, Subpart A).

(c) *Locations where records may be examined or copied.* (1) *Agency, contractor, and approved scale testing organization records.* Records of agencies, contractors, and approved scale testing organizations available for public inspection shall be retained at the principal place of business of the agency, contractor, or approved scale testing and certification organization.

(2) *Service records.* Records of the Service available for public inspection shall be retained at each field office and at the headquarters of the Service in Washington, D.C.

§ 800.155 Detailed work records—general requirements.

(a) *Preparation.* Detailed work records shall be prepared for each official inspection, Class X or Class Y weighing, and equipment testing service performed or provided under the Act. The records shall (1) be on standard forms prescribed in the instructions; (2) be typed or legibly written in English; (3) be concise, complete, and accurate; (4) show all information and data that are needed to prepare the corresponding official certificates or official report; (5) show the name or initials of the individual who made each determination; and (6) show other information required by the Service to monitor or supervise the service provided.

(b) *Use.* Detailed work records shall be used as a basis for (1) issuing official certificates or official forms, (2) approving inspection and weighing equipment for the performance of official inspection or Class X or Class Y weighing services, (3) monitoring and supervising activities under the Act, (4) answering inquiries from interested persons, (5) processing complaints, and (6) billing and accounting. These records may be used to report results of official inspection or Class X or Class Y weighing services in advance of issuing an official certificate.

(c) *Standard forms.* The following standard forms shall be furnished by the Service to an agency: Official Export Grain Inspection and Weight Certificates (singly or combined), official inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. Other forms used by an agency in the performance of official services, including certificates, shall be furnished by the agency.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.156 Official inspection records.

(a) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, consist of one or more pan tickets as prescribed in the instructions. Activities that are performed as a series during the course of an inspection service may be recorded on one pan ticket or on separate pan tickets. The original copy of each pan ticket shall be retained by the agency or field office that performed the inspection.

(b) *Inspection logs.* The record of an official inspection service for grain in a combined lot and shiplot shall include the official inspection log as prescribed in the instructions. The original copy of each inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency, one copy of the inspection log shall be promptly sent to the appropriate field office.

(c) *Other forms.* Any detailed test that cannot be completely recorded on a pan ticket or an inspection log shall be recorded on other forms prescribed in the instructions. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, an approved abbreviation may be used.

(d) *File samples*—(1) *General.* The record for an official inspection service based, in whole or in part, on an examination of a grain in a sample shall include one or more file samples as prescribed in the instructions.

(2) *Size.* Each file sample shall consist of an unworked portion of the official sample or warehouseman's sample obtained from the lot of grain and shall be large enough to permit a reinspection, appeal inspection, or Board appeal inspection for the kind and scope of inspection for which the sample was obtained. In the case of a submitted sample inspection, if an undersized sample is received, the entire sample shall be retained.

(3) *Method.* Each file sample shall be retained in a manner that will preserve the representativeness of the sample from the time it is obtained or received by the agency or field office until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained according to the instructions.

(4) *Uniform system.* To facilitate the use of file samples, agencies shall establish and maintain a uniform file sample system according to the instructions.

(5) *Forwarding samples.* Upon request by the supervising field office or the Board of Appeals and Review, each agency shall furnish file samples (i) for field appeal or Board appeal inspection service, or (ii) for monitoring or supervision. If, at the request of the Service, an agency locates and forwards a file sample for an appeal inspection, the agency may, upon request, be reimbursed at the rate prescribed in § 800.71 by the Service.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.157 Official weighing records.

(a) *Scale ticket, scale tape, or other weight records.* In addition to the official certificate, the record for each Class X or Class Y weighing service shall consist of a scale ticket, a scale tape, or any other weight record prescribed in the instructions.

(b) *Weighing logs.* The record of a Class X or Class Y weighing service performed on bulk grain in a combined lot or bulk shiplot grain shall include the official weighing log as prescribed in the instructions. The original copy of each weighing log shall be retained by the field office or agency that performed the weighing.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.158 Equipment testing work records.

The record for each official equipment testing service or activity consists of an official equipment testing report as prescribed in the instructions. Upon completion of each official equipment test, one or more copies of the completed testing report may, upon request, be issued to the owner or operator of the equipment. The testing report shall show the (1) date the test was performed, (2) name of the organization and personnel that performed the test, (3) names of the Service employees who monitored the testing, (4) identification of equipment that was tested, (5) results of the test, (6) names of any interested persons who were informed of the test results, (7) number or other identification of the approval tag or label affixed to the equipment, and (8) other information required by the instructions.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.159 Related official records.

(a) *Volume of work report.* Field offices and agencies shall prepare periodic reports showing the kind and the volume of inspection and weighing services that they performed. The report shall be prepared and copies shall be submitted to the Service according to the instructions.

(b) *Record of withdrawals and dismissals.* Field offices and agencies shall maintain a complete record of requests for official inspection or weighing services that are withdrawn by the applicant or that are conditionally withheld or dismissed. The record shall be prepared and maintained according to the instructions.

(c) *Licensee record.* Licensees, including licensed warehouse samplers, shall (1) keep the license issued to them by the Service and (2) keep or have reasonable access to a complete record of the Act, the standards, the regulations, and the instructions.

(Approved by the Office of Management and Budget under control number 0580-0011)

OFFICIAL CERTIFICATES

SOURCE: Sections 800.160 through 800.166 appear at 50 FR 45396, Oct. 31, 1985.

§ 800.160 Official certificates; issuance and distribution.

(a) *Required issuance.* An official certificate shall be issued for each inspection service and each weighing service except as provided by §§ 800.129 and 800.139 and paragraph (b) of this section.

(b) *Distribution*—(1) *General*—(i) *Export.* The original and at least three copies of each certificate will be distributed to the applicant or applicant's order. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(ii) *Nonexport.* The original and at least one copy of each certificate will be distributed to the applicant or to the applicant's order. In the case of inbound trucklot grain, one copy shall be delivered by the applicant to the person who owned the grain at the time of delivery. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(iii) *Local movements of shiplot grain.* When shiplot grain is offered for inspection as a single lot and a portion of the lot is returned to the elevator, certificates representing the inspection service shall not be issued unless (A) requested by the applicant or (B) deemed necessary by official personnel.

(2) *Reinspection and appeal inspection services.* In addition to the distribution requirements of paragraph (b) of this section, one copy of each reinspection or appeal inspection certificate shall be distributed to each interested person of record or the interested person's order and to the agency or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies may be assessed according to the fee schedules established by the agency or the Service.

(c) *Prompt issuance.* The results of the inspection or weighing service shall be reported to the applicant on the date the inspection or weighing service is completed. Certificates shall be issued as soon as possible, but no later than the close of business on the next business day. Upon request of an agency or a field office, the requirements of this paragraph may be waived by the Service when results have been reported before issuing the certificate.

(d) *Who may issue certificates*—(1) *Authority.* Certificates for inspection or Class X weighing services may be issued only be official personnel who are specifically licensed or authorized to perform and certify the results reported on the certificate. Certificates for Class Y weighing services may be issued only by individuals who are licensed or authorized or are approved to perform and certify the results.

(2) *Exception.* The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the service is performed by one person, the certificate should be issued by that person. If the service is performed by two or more persons, the certificate should be issued by the person who made the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the service being certificated.

(e) *Name requirement.* On export certificates, the typewritten name and signature of the individual issuing the certificate shall appear on the original and all copies. On all other certificates, the name or signature of the individual issuing the certificate shall appear on the original and all copies. Upon request by the applicant, the name and signature may be shown on all other certificates.

(f) *Authorization to affix names*—(1) *Requirements.* The name or signature of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. An agent affixing the name and signature shall (i) be employed by the agency or Service; (ii) have been designated to affix names and signatures; and (iii) hold a power of attorney from the person whose name and signature will be affixed. The power of attorney shall be on file with the agency or Service.

(2) *Initialing.* When a name or signature is affixed by an authorized agent, the initials of the agent shall appear directly below or following the signature of the person.

(g) *Advance information.* Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested party, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification after dismissal.* An official certificate cannot be issued for a service after the request has been withdrawn or dismissed.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

§ 800.161 Official certificate requirements.

(a) *General.* Official certificates shall show the information and statements required by § 800.161 through § 800.165 and the instructions. The Administrator shall approve any other information and statements reported. Information shall be reported in a uniform, accurate, and concise manner, be in English, be typewritten or handwritten in ink, and be clearly legible.

(b) *Required format.* Official certificates shall be uniform in size, shape, color, and format and conform to requirements prescribed in the instructions. Upon request and for good cause, the Service may approve special design certificates. All information and statements shall be shown on the front of the certificate, except that on domestic grain certificates, (1) approved abbreviations for official factors and official criteria, with their meanings, may be shown on the back and (2) the identification of carriers or containers in a combined-lot inspection may be shown on the back if ample space is not available on the front. When information is recorded on the back of the certificate, the statement "See reverse side" must be shown on the front.

(c) *Required information.* Each official certificate shall show the following information in accordance with the instructions: (1) For a agency issuing export certificates or the Federal Grain Inspection Service, "United States Department of Agriculture—Federal Grain Inspection Service;" (2) for a designated agency, the name of the agency, as applicable; (3) captions identifying the kind of service; (4) a preprinted serial number and lettered prefix; (5) "original" or "copy," as applicable; (6) "divided lot," "duplicate," or "corrected," as applicable; (7) the identification of the carrier or container; (8) the date the service was performed; (9) the date and method of sampling; (10) the kind of movement and the level of service performed; (11) the grade and kind or "Not Standardized Grain," as applicable; (12) the results of the service performed; (13) the location of the issuing office; (14) the location of the grain when the service was performed; (15) a space for remarks; (16) whether a reinspection or appeal inspection service was based in whole or in part on file samples when file samples are used; (17) a statement reflecting the results of a stowage examination, when applicable; (18) seal records, when applicable; and (19) the name of the person issuing the certificate.

(d) *Required statements.* Each official certificate shall include the following statements according to the instructions: (1) A statement that the certificate is issued under the authority of the United States Grain Standards Act; (2) a nonnegotiability statement; (3) a warning statement; and (4) a statement referencing the certificate number and date. Each official certificate for an official sample-lot inspection service shall include a caption "U.S. Grain Standards Act" and a USDA-FGIS shield ghosted across the front. Each official certificate for a warehouseman's sample-lot inspection, a submitted sample inspection, or Class Y weighing service shall include a statement that the certificate does not meet the requirements of section 5 of the Act of warehouseman's sample-lot inspection, the word "QUALIFIED;" for submitted sample inspections, the words "Not Officially Sampled;" for Class Y weighing, the words "Class Y Weighing" screened across the front.

(e) *Permissive information and statements*—(1) *Certificates.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on the certificate if the information or statements have been approved in the instructions or on a case-by-case basis by the Administrator.

(2) *Letterhead.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on letterhead stationary of the Service or an agency when (i) ample space is not available for reporting the information or statements on the certificate, (ii) letterhead stationary is determined to be more suitable than the official certificate, and (iii) the certificate is referenced on the letterhead stationary and distributed according to § 800.160. Letterhead stationary of the Service shall be used for all export grain.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

§ 800.162 Certification of grade; special requirements.

(a) *General.* Each official certificate for grade shall show (1) the grade and factor information required by the Official U.S. Standards for Grain; (2) the test weight of the grain; (3) the moisture content of the grain; (4) the results for each official factor for which a determination was made; (5) the result for each official factor that determined the grade when the grain is graded other than U.S. No. 1; (6) any other factor information considered necessary to describe the grain; and (7) any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

(b) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraph (a) of this section, the results of all official factors defined in the Official U.S. Standards for Grain for the type of grain being inspected.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

§ 800.163 Divided-lot certificates.

(a) *General.* When shiplot grain is offered for inspection or Class X weighing as a single lot and is certificated as a single lot, the applicant may exchange the official certificate for two or more divided-lot certificates. This applies to original inspection, reinspection, appeal inspection, Board appeal inspection, and Class X weighing services.

(b) *Application.* Requests for divided-lot certificates shall be made (1) in writing; (2) by the applicant who filed the inital request; (3) to the office that issued the outstanding certificate; (4) within 5 business days of the outstanding certificate date; and (5) before the identity of the grain has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show a aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall (1) be in the custody of the agency or the Service; (2) be marked "Void;" and (3) show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show (1) a statement indicating the grain was inspected or weighed as an undivided lot; (2) the terms "Divided Lot-Original," and the copies shall show "Divided Lot-Copies;" (3) the same serial number with numbered suffix (for example, 1764-1, 1764-2, 1764-3, and the like); and (4) the quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and be distributed according to § 800.160.

(g) *Limitations.* No divided-lot certificate can be issued (1) for grain in any shipment other than shiplot grain inspected or weighed as a single lot or (2) for an export certificate which has been superseded by another export certificate. After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

(h) *Use of superseded certificate prohibited.* As of the date of the divided-lot certificate, the superseded certificate will be void and shall not be used or represent the grain.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

§ 800.164 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed: (1) in writing; (2) by the applicant who requested the service covered by the lost or destroyed certificate; and (3) with the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show (1) the terms "Duplicate-Original" and the copies shall show "Duplicate-Copies" and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 800.160.

(d) *Limitations.* Duplicate certificates will not be issued for certificates that have been superseded.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

§ 800.165 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates shall be verified by the individual whose name or signature is shown on the certificate, or by the authorized agent who affixed the name or signature. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance*—(1) *Export certificates.* No corrections, erasures, additions, or other changes can be made to an export certificate. If any error is found prior to issuance, a new certificate shall be prepared and issued and the incorrect certificate marked "Void."

(2) *Other than export certificates.* No corrections, erasures, additions, or other changes shall be made to other than export certificates which involve identification, grade, gross, tare, or net weight. If errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked "Void." Otherwise, errors may be corrected provided that (i) the corrections are neat and legible, (ii) each correction is initialed by the individual who corrects the certificate, and (iii) the corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance*—(1) *General.* If errors are found on a certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show (i) the terms "Corrected-Original" and "Corrected-Copy;" (ii) a statement identifying the superseded certificate and the corrections; (iii) a statement indicating the superseded certificate was not surrended if the incorrect certificate was not surrendered; and (iv) a new serial number. In addition, the incorrect certificate shall be marked "Void" when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

(f) *Use of superseded certificate prohibited.* As of the date of issuance of the corrected certificate, the superseded certificate will be void and shall not be used to represent the grain.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

§ 800.166 Reproducing certificates.

Official certificates may be photo copied or similarly reproduced.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

§ 800.170 When a license or authorization or approval is required.

(a) *Requirement.* (1) Any individual who performs or represents that he or she is licensed or authorized to perform any or all inspection or Class X weighing services under the Act must be licensed or authorized by the Service to perform each service. (2) Any individual who performs or represents that he or she is licensed or authorized, or an approved weigher, to perform Class Y weighing services under the Act must be licensed or authorized, or approved, by the Service to perform this service.

(b) *Excepted activities.* A license or authorization, or approval for weighing, under the Act and regulations is not required for (1) opening or closing a carrier or container of grain, or transporting or filing official samples, or similar laboring functions; (2) typing or filing official inspection and weighing certificates or other official forms or performing similar clerical functions; (3) performing official equipment testing functions with respect to official inspection equipment; (4) performing inspection, weighing, or scale testing functions that are not conducted for the purposes of the Act; or (5) performing scale testing functions by a State or municipal agency or by the employees of such agencies.

(c) *30-day waiver.* A prospective applicant for a license as a sampler, inspection technician, or weighing technician may, for a period of time not to exceed 30 calendar days, help perform those official sampling, inspection, or Class X or Class Y weighing services for which the applicant desires to be licensed, under the direct physical supervision of an individual who is licensed to perform the services. The supervising individual shall be fully responsible for each function performed by the prospective applicant and shall initial any work form prepared by the prospective applicant.

(d) *No fee by Service.* No fee will be assessed by the Service for licensing an individual employed by an agency or contractor.

(e) *Fee by agency.* At the request of the Service, an agency may help examine an applicant for a warehouse sampler's license for competency and may assess a fee in accordance with the provisions of § 800.70. The fee shall be paid by the applicant or by the elevator that employs the applicant.

(Secs. 9, 18, Pub. L. 94-582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e))

[45 FR 15810, Mar. 11, 1980, as amended at 46 FR 30325, June 5, 1981]

§ 800.171 Who may be licensed or authorized.

(a) *Prohibitions.* No person may be licensed or authorized who has a conflict of interest as defined in section 11 of the Act or specified in § 800.187.

(b) *Exceptions to prohibitions*—(1) *Conflict by agency.* An employee of an agency that has a conflict of interest that is waived by the Administrator under section 11(b)(5) of the Act may be licensed: *Provided,* That the employee has no conflict of interest other than the agency conflict of interest.

(2) *Warehouse samplers.* A qualified employee of an elevator may be licensed to perform specified sampling services under the Act in accordance with the provisions of § 800.174(a)(2).

(c) *General qualifications*—(1) *Inspection and weighing.* To obtain a license to perform inspection or weighing services under the Act, an individual must be employed by an agency to perform the services and must otherwise be found competent in accordance with this section and § 800.173.

(2) *Specified technical services.* To obtain a license to perform specified sampling, inspection testing, weighing, and similar services under the Act, an individual must (i) be employed by an agency to perform the services, or (ii) enter into or be employed under a contract with the Service to perform the services, and (iii) otherwise be found competent in accordance with this section and § 800.173.

(3) *Warehouse sampler.* To obtain a warehouse sampler's license, an applicant must be employed by an elevator to perform sampling services and otherwise be found competent in accordance with this section and § 800.173.

(4) *Requirements.* To be considered competent, an individual must (i) meet the qualifications specified in § 800.173; and (ii) have available the equipment and facilities necessary to perform the services for which the individual is to be licensed.

(d) *Competency determinations*—(1) *Agency samplers and technicians.* The competency of an applicant for a license as a sampler, inspection technician, or weighing technician shall be determined by (i) the chief inspector or the chief weighmaster, as applicable, of the agency that employs the applicant or, in the case of a warehouse sampler, the agency that is assigned the area in which the elevator that employs the sampler is located, and (ii) the field office supervisor.

(2) *Inspectors, weighers, contract samplers, and technicians.* The competency of an applicant for a license as an inspector or weigher or any license issued under the terms of a contract with the Service shall be determined by the Service.

(3) *Examinations.* A determination of competency of an applicant for a li-

cense shall include an evaluation of the results of examinations or reexaminations under § 800.173.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36072, Sept. 14, 1984]

§ 800.172 Applications for licenses.

(a) *General.* An application for a license, the renewal of a license, or the return of a suspended license shall be made to the Service on forms furnished by the Service. Each application shall (1) be in English, (2) be typewritten or legibly written in ink, (3) show all information prescribed by the application form, and (4) be signed by the applicant.

(b) *Additional information.* An applicant shall furnish any additional information considered necessary by the Service for consideration of an application.

(c) *Withdrawal.* An application for a license may be withdrawn by an applicant at any time.

(d) *Review of applications*—(1) *General procedure.* Each application shall be reviewed to determine whether the applicant and the application comply with the Act and the regulations.

(2) *Application and applicant in compliance.* If it is determined that the applicant and the application comply with the Act and the regulations, the requested license shall be granted.

(3) *Application not in compliance.* If an application does not comply with this section and the noncompliance prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit any needed information. If the needed information is not submitted by the applicant within a reasonable time, the application may be dismissed.

(4) *Applicant not in compliance.* If it is determined that an applicant does not comply with the provisions of the Act and §§ 800.171, 800.173, and 800.187 at the time the application is submitted, the applicant shall be provided an opportunity to comply. If the applicant cannot comply within a reasonable period of time, the application shall be dismissed.

(e) *Procedure for dismissal.* If a dismissal involves an application for a renewal of a license or for the return of a suspended license, the dismissal shall be performed in accordance with the provisions of § 800.179. All other dismissals shall be performed by promptly notifying the applicant and the employer of the applicant of the reasons for the dismissal.

(Approved by the Office of Management and Budget under control number 0580-0003)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453, Sept. 29, 1983]

§ 800.173 Examinations and reexaminations.

(a) *General.* Applicants for a license and individuals who are licensed to perform any or all official inspection or Class X or Class Y weighing services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the official inspection or weighing functions for which they desire to be, or are, licensed.

(b) *Time and place of examinations and reexaminations.* Examinations or reexaminations under this section shall be conducted by official personnel designated by the Service and shall be given at a reasonable time and place in accordance with the instructions.

(c) *Scope of examinations and reexaminations.* Examinations or reexaminations may include oral or written tests on the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the procedures for the inspection and weighing of grain under the Act, the instructions, on-site performance evaluations, and vision or olfactory examinations.

(d) *Competency standards*—(1) *Inspection.* An individual may be found to be incompetent to perform official inspection services if the individual (i) has a color-vision deficiency; (ii) cannot meet the physical requirements necessary to perform the functions; (iii) cannot readily distinguish between the different kinds and classes of grain, or the different conditions in grain, including heating, musty, sour, insect infestation, and smut; (iv) cannot demonstrate a technical ability to operate grain sampling, testing, and grading equipment; (v) does not have a working knowledge of applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, and the instructions; (vi) cannot determine work-related mathematical computations; or (vii) cannot prepare legible records in English.

(2) *Weighing.* An individual may be found to be incompetent to perform Class X or Class Y weighing services under the Act if the individual (i) does not meet the requirements of paragraphs (d)(1)(ii), (v), (vi), and (vii) of this section or (ii) cannot demonstrate a technical ability to operate grain weighing equipment.

§ 800.174 Issuance and possession of licenses and authorizations.

(a) *Scope of licenses and authorizations.* Subject to the provisions of § 800.171, eligible individuals may be licensed or authorized by the Service to perform one or more services specified in this paragraph.

(1) *Official samplers.* Individuals employed by an agency or the Service or employed under the terms of a contract with the Service may be licensed or authorized, as applicable, to perform or supervise the performance of stowage examinations, grain sampling, and related technical services and to issue official certificates for the services performed by them.

(2) *Licensed warehouse samplers.* Elevator or warehouse employees may be licensed to sample grain and perform stowage examinations. No elevator employee shall be licensed to (i) sample export grain for inspection under the Act, (ii) test or grade grain, or (iii) certify the results of any inspection service under the Act.

(3) *Official inspection technicians.* Individuals employed by an agency or the Service or employed under the terms of a contract with the Service may be licensed or authorized to perform or supervise the performance of stowage examinations, grain sampling, or all or specified noninterpretive laboratory-testing services and to issue official certificates for the services performed by them.

(4) *Official inspectors.* Individuals employed by an agency or the Service may be licensed or authorized to perform and supervise the performance of stowage examinations, sampling, laboratory-testing, grading, and related services and to issue official certificates for the services performed by them.

(5) *Official weighing technicians.* Individuals who are employed by an agency or the Service to observe the loading, unloading, and handling of grain that has been or is to be weighed under the Act may be licensed or authorized to perform and supervise the performance of grain handling and stowage examination services and to issue official certificates for the services performed by them.

(6) *Official weighers.* Individuals employed by an agency or the Service may be licensed or authorized to perform and supervise the performance of grain handling, stowage examination, official weighing (Class X), and supervision of weighing (Class Y), and related services and to issue official certificates for the services performed by them.

(7) *Authorized scale tester.* Individuals employed by the Service may be authorized to test and supervise the testing of scales used for Class X and Class Y weighing services and to approve and certify scales based on the results of these tests.

(b) *Condition for issuance*—(1) *Compliance with the Act.* Each license is issued on the condition that the licensee will, during the term of the license, comply with the Act, the regulations, and the instructions.

(2) *Possession of license.* Each license shall be the property of the Service, but each licensee shall have the right to possess the license subject to the provisions of §§ 800.173, 800.186, and 800.187.

(c) *Duplicate license.* Upon satisfactory proof of the loss or destruction of a license, a duplicate will be issued by the Service.

(d) *Retention of licenses.* Each license shall be retained by the holder of the license in a manner that the license can be examined upon request by service personnel.

§ 800.175 Termination of licenses.

(a) *Term of license.* Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this section. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

(b) *Termination schedule for licenses.* Subject to the provisions of paragraph (a) of this section, licenses shall terminate on the last day of the month shown in the following schedule:

Last names beginning with	Termination date
A	January.
B	February.
C, D	March.
E, F, G	April.
H, I, J	May.
K, L	June.
M	July.
N, O, P, Q	August.
S	September.
R, T, U, V	October.
W	November.
X, Y, Z	December.

(c) *Termination notices.* The Service shall issue notice of termination to licensees and to their employers at least 60 days before the termination date. The notice shall (1) provide detailed instructions for requesting renewal of licenses; (2) state whether a reexamination will be required; and (3) if a reexamination will be required, show the nature and scope of the reexamination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed on or before the termination date.

(d) *Renewal of licenses.* Licenses that are renewed shall show the permanent license number, the date of renewal, and the word "Renewed."

(e) *Termination of suspended licenses.* Any suspension of a license, including voluntary suspension or suspension by change in employment, shall not affect the termination date of the license. If a licensee applies for renewal of the license prior to the termination date, the license will not terminate during the period of suspension.

(f) *Surrender of license.* Each license that is terminated, suspended, or canceled under the provisions of §§ 800.175 through 800.178 or is suspended, revoked, or not renewed for cause under the provisions of § 800.179 shall be promptly surrendered to the field office.

(g) *Marking terminated, canceled, or revoked licenses.* Each terminated, canceled, or revoked license surrendered to the Service shall be marked "Canceled."

§ 800.176 Voluntary cancellation or suspension of licenses.

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of § 800.172; a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

§ 800.177 Automatic suspension of license by change in employment.

A license issued to an individual who is employed by an agency shall be automatically suspended when the individual ceases to be employed by the agency. If the individual is reemployed by the agency or employed by another agency within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of §§ 800.172 and 800.173.

§ 800.178 Summary revocation of licenses.

Licenses may be summarily revoked upon a finding that the licensee has been convicted of any offense either prohibited by section 13 of the Act or prohibited by Title 18 of the United States Code, with respect to the performance of services under the Act.

§ 800.179 Refusal of renewal, suspension, or revocation of licenses for cause.

(a) *General.* A license may be suspended or revoked or may be refused renewal or return (if suspended) for causes prescribed in section 9 of the Act.

(b) *Procedure for summary action.* Under section 9 of the Act, any license may, without first affording the licensee (hereafter in this section the "respondent") an opportunity for a hearing, be summarily suspended pending final determination, whenever the action is considered to be in the best interest of the official inspection system. Such action shall be effective upon receipt of notice from the Service by the respondent. Within 30 calendar days after issuing a notice of summary action, the Service shall afford the respondent an opportunity for a hearing as provided under paragraph (c) of this section. Pending final determination, the Service may terminate the action if alternative employment arrangements satisfactory to the Service can be and are made for the respondent by the employer of the respondent.

(c) *Procedure for other than summary action.* Except as provided for in paragraph (a) of this section, before the Service refuses to renew, or suspends or revokes a license, or refuses to return a suspended license, the respondent shall be (1) notified of the proposed action and the reasons therefor, and (2) afforded (i) an opportunity to express his/her views on the proposed action in an informal manner, or (ii) at the request of the respondent, a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H).

§ 800.180 Summary cancellation of licenses.

A license may be summarily canceled when (a) the license has been under voluntary or automatic suspension for a period of 1 year and there has been no request for return of the license or a request for return of the license has been dismissed in accordance with § 800.172; or (b) the licensee has died or fails to surrender the license in accordance with § 800.175(f).

DUTIES AND CONDUCT OF LICENSED AND AUTHORIZED PERSONNEL

§ 800.185 Duties of official personnel and warehouse samplers.

(a) *General.* Official personnel and warehouse samplers shall, when performing official services or duties under the Act, comply with the Act, the regulations, and the instructions.

(b) *Inspection and weighing services.* Official personnel shall perform requested official inspection and Class X and Class Y weighing services (1) without discrimination, (2) as soon as practicable, and (3) in accordance with methods and procedures prescribed in the instructions.

(c) *Sealing carriers or containers.* Upon request, or in accordance with the instructions, official personnel shall (1) when feasible, affix security seals to doors, hatch covers, and similar openings on carriers or containers that contain grain that has been officially inspected or Class X or Class Y weighed under the Act and (2) show seal records on certificates and other official forms in accordance with the provisions of § 800.161.

(d) *Scope of operations.* Official personnel and warehouse samplers shall (1) operate only within the scope of the services specified on their license or authorization and (2) operate only within the area of responsibility assigned to the applicable agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

(e) *Working materials.* Official personnel and warehouse samplers shall be responsible for maintaining a working knowledge of the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the instructions, and all amendments and revisions thereto.

(f) *Observation of services.* Official personnel and warehouse samplers shall permit any person (or the person's agent) who has a financial interest in grain that is being inspected or weighed under the Act, or in equipment that is being tested under the

Act, to observe the performance of any or all official inspection, or Class X or Class Y weighing. Appropriate areas in the elevator may be specified by the Service in conjunction with the elevator management for observing each service. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the services, but shall not permit a close over-the-shoulder type of observation by the interested person or the person's agent.

(g) *Reporting violations.* Official personnel and warehouse samplers shall in accordance with the instructions promptly report (1) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions, and (2) information on any instructions which have been issued to them by any official personnel or other persons which are contrary to the Act, the regulations, or the instructions.

(h) *Related duties.* Official personnel and warehouse samplers shall, when practicable, assist in training other employees who desire to become licensed.

(i) *Instructions by Service.* Official personnel and warehouse samplers shall carry out all written instructions or oral directives issued to them by the Service and, upon request, inform the Service regarding inspection, weighing, or equipment testing services performed by them. Oral directives from the Service not found in written instructions shall be confirmed in writing, upon request.

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[45 FR 15810, Mar. 11, 1980; 45 FR 55119; Aug. 18, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983]

§ 800.186 Standards of conduct.

(a) *General.* Official personnel and warehouse samplers must maintain high standards of honesty, integrity, and impartiality to assure proper performance of their duties and responsibilities and to maintain public confidence in the services provided by them.

(b) *Prohibited conduct; official personnel and warehouse samplers.* No official personnel or warehouse sampler shall:

(1) Perform any official inspection, Class X or Class Y weighing, or equipment testing service unless licensed or authorized to do so;

(2) Engage in criminal, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the Department or the Service;

(3) Report for duty in an intoxicated or drugged condition, or consume intoxicating beverages or incapacitating drugs while on duty;

(4) Smoke in prohibited areas in elevators or perform official services in an unsafe manner that could endanger official personnel working on or about the premises;

(5) Make unwarranted criticisms or accusations against other official personnel, warehouse samplers, or employees of the Department; and

(6) Refuse to testify or respond to questions in connection with official inquiries or investigations.

(7) Coerce or attempt to coerce any person into providing any special or undue benefit to official personnel, approved weighers, or warehouse samplers.

(c) *Prohibited conduct; official personnel.* In addition to the conduct prohibited by paragraph (b) of this section, no official personnel shall:

(1) Solicit contributions from other official personnel or warehouse samplers for an employee of the Service, or make such a contribution. Nothing in this paragraph shall preclude the occasional voluntary giving or acceptance of gifts of a nominal value on special occasions;

(2) Take any action that might (i) create the appearance of a loss of impartiality or (ii) adversely affect the confidence of the public in the integrity of the inspection, weighing, or equipment testing services performed under the Act;

(3) Engage in any outside (unofficial) work or activity that (i) may impair their efficiency in performing official functions; or (ii) consists in whole or in part of unofficial acts of sampling, stowage examination, inspection testing, equipment testing, inspection, or weighing services similar to the official services for which the

employing agency is designated; or (iii) may result in the acquisition of property interests that could create a conflict of interest as defined in section 11 of the Act; or (iv) may tend to bring criticism on or otherwise embarrass the Department or the Service;

(4) Issue to other official personnel, warehouse samplers, or approved weighers any instructions or directives inconsistent with the Act, the regulations, the Official U.S. Standards for Grain, or the instructions;

(5) Organize or help establish a general or specialized farm organization, or act as an officer or business agency in, recruit members for, or accept office space or contributions from such an organization;

(6) Advocate that any general or specialized farm organization better represents the interest of farmers than any other organization or individual, or recommend that the responsibilities of any government agency be carried out through a general or specialized farm organization. Nothing in paragraph (c)(5) of this section shall prevent official personnel from holding membership in a general or specialized farm organization or prohibit official personnel from participating in the operation of local groups or organizations that conduct government-authorized programs.

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44454, Sept. 29, 1983]

§ 800.187 Conflicts of interest

(a) *General.* Warehouse samplers are exempt from the conflict-of-interest provisions of this section.

(b) *What constitutes a gratuity.* For the purposes of these regulations, the term "gratuity" shall include any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. The term shall not include (1) the occasional exchange of a cup of coffee or similar social courtesies of nominal value in a business or work relationship if the exchange is wholly free of any embarrassing or improper implications; (2) the acceptance of unsolicited advertising material such as pencils, pens, and note pads of nominal value if the material is wholly free of any embarrassing or improper implications; and (3) the exchange of the usual courtesies in an obvious family or personal relationship (including those between official personnel and their parents, spouses, children, or close personal friends) when the circumstances make it clear that the exchange is the result of the family or personal relationship, rather than a business or work relationship.

(c) *Conflicts.* In addition to the conflicts of interest prohibited by section 11 of the Act, the activities specified in this paragraph shall also be considered to be a conflict of interest. Accordingly, no official personnel shall, during the term of their license or authorization (including any period of suspension):

(1) Accept any gratuity.

(2) Accept any fee or charge or other thing of monetary value, in addition to the published fee or charge, for the performance of official inspection or weighing services under circumstances in which the acceptance could result, or create the appearance of resulting, in (i) the use of their office or position for undue private gain, (ii) an undertaking to give undue preferential treatment to any group or any person, or (iii) any other loss of independence or impartiality in the performance of official inspection or Class X or Class Y weighing services.

(3) Knowingly perform, or participate in performing, an inspection or weighing service on grain in which they have a direct or indirect financial interest.

(4) Engage in the business by buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than a grower of grain, or in the disposition of inspection samples); or in the business of cleaning, treating, or fitting carriers or containers for transporting or storing grain; the merchandising for nonfarm use of equipment for cleaning, drying, treating, fumigating, or otherwise processing, handling, or storing grain; or the merchandising of grain inspection or weighing equipment (other than buying or selling by official personnel of the equipment for use in the performance of their official services).

(5) Seek or hold any appointive or elective office in a grain industry organization or association. This provision does not apply to organizations of official inspectors or official weighers.

(6) Participate in any transaction involving the purchase or sale of corporate stocks or bonds, grain or grain-related commodities, or other property for speculative or income purposes if the transaction could reasonably be construed to interfere with the proper and impartial performance of official inspection for Class X or Class Y weighing services. Official personnel are not prohibited from (i) producing grain as a grower and selling the grain; (ii) making bona fide investments in governmental obligations, banking institutions, savings and loan associations, and other tangibles and intangibles that are clearly not involved in the production, transportation, storage, marketing, or processing of grain; or (iii) borrowing money from banks or other financial institutions on customary terms.

(d) *Reports of interests.* Official personnel shall report information regarding their employment or other business or financial interests which may be required by the Service.

(e) *Avoiding conflicts of interest.* Official personnel shall not acquire any financial interest or engage in any activity that would result in a violation of this § 800.187, or § 800.186, or section 11 of the Act and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. For the purpose of this section, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of official personnel shall be considered to be an interest of the official personnel.

(f) *Disposing of a conflict of interest*—(1) *Remedial action.* Upon being informed that a conflict of interest exists and that remedial action is required, an applicant for a license and official personnel shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants and official personnel who believe that remedial action will cause undue personal hardship may request an exception by forwarding to the Service a written statement setting forth the facts, circumstances, and reasons for requesting an exception.

(3) *Failure to terminate.* If a final determination is made by the Service that a conflict of interest does exist and should not be excepted, failure to terminate the conflict of interest shall subject: (i) An applicant for a license to a dismissal of the application; (ii) An employee of the Service to disciplinary action; and (iii) A licensee to license revocation.

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[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983]

§ 800.188 Crop year, variety, and origin statements.

No official personnel shall certify or otherwise state in writing (a) the year of production of grain, including use of terms such as "new crop" or "old crop"; (b) the place or geographical area where the grain was grown; or (c) the variety of the grain.

§ 800.189 Corrective actions for violations.

(a) *Criminal prosecution.* Official personnel and warehouse samplers who commit an offense prohibited by section 13 of the Act are subject to criminal prosecution in accordance with section 14 of the Act.

(b) *Administrative action*—(1) *Other than Service employees.* In addition to possible criminal prosecution, licensees and warehouse samplers are subject to administrative action in accordance with sections 9 and 14 of the Act.

(2) *Service employees.* In addition to possible criminal prosecution, employees of the Service are subject to disciplinary action by the Service.

DELEGATIONS, DESIGNATIONS, APPROVALS, CONTRACTS, AND CONFLICTS OF INTEREST

AUTHORITY: Sections 800.195 through 800.199 were issued under secs. 8, 9, 10, 13, and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e.

§ 800.195 Delegations.

(a) *General.* Eligible States may be delegated authority to perform official services (excluding appeal inspection) at export port locations within their respective States.

(b) *Restrictions.* Only the Service or the delegated State may perform official inspection, Class X, and Class Y weighing services at an export port location within the State. If official inspection services, at export port locations within the State, are performed by the Service, only the Service may perform Class X and Class Y weighing services at the locations. If official inspection services are performed by a delegated State, either the State or the Service may perform Class X and Class Y weighing services at the export port locations within the State.

(c) *Who can apply.* States which: (1) Were performing official inspection at an export port location under the Act on July 1, 1976, or; (2) (i) performed official inspection at an export port location at any time prior to July 1, 1976; (ii) were designated under section 7(f) of the Act on December 22, 1981, to perform official inspections; and (iii) operate in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 per centum of the total amount of grain exported from the United States annually may apply to the Service for a delegation.

(d) *When and how to apply.* A request for authority to operate as a delegated State should be filed with the Service not less than 90 calendar days before the State proposes to perform the official service. A request for authority to operate as a delegated State shall show: (1) The export port location(s) where the State proposes to perform official inspection, Class X, and Class Y weighing services; (2) the estimated annual volume of inspection and weighing services for each location; and (3) the schedule of fees the State proposes to assess. A request for a revision to a delegation shall (i) be filed with the Service not less than 90 calendar days before the desired effective date, and (ii) specify the change desired.

(e) *Review of eligibility and criteria for delegation.* Each applicant for authority to operate as a delegated State shall be reviewed to determine whether the applicant meets the eligibility conditions contained in paragraph (c) of this section and the criteria contained in section 7(f)(1)(A) of the Act. The requested delegation may be granted if the Service determines that the applicant meets the eligibility conditions and criteria. If an application is dismissed, the Service shall notify the applicant promptly, in writing, of the reason(s) for the dismissal.

(f) *Responsibilities*—(1) *Providing official services.* Each delegated State shall be responsible for providing each official service authorized by the delegation at all export elevators at export port locations in the State. The State shall perform each official service according to the Act, regulations, and instructions.

(2) *Staffing, licensing, and training.* Delegated States shall employ official personnel on the basis of job qualifications rather than political affiliations. The State shall employ sufficient personnel to provide the services normally requested in an accurate and timely manner. The State shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. The State shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(3) *Rotation of personnel.* Where feasible, each delegated State shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighting systems.

(4) *Supervision.* The State and its officials shall be responsible for the actions of the official personnel employed by the State, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities in the State. The State shall supervise official activities according to the Act, regulations, and instructions and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act,

regulations, or instructions. Each State shall report to the Service information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to State personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, regulations, or instructions.

(5) *Conflict of interest*—(i) *General.* The delegated State and any commissioner, director, employee, or other related person or entity shall not have a conflict of interest, as defined in section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d).

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

(6) *Fees.* The delegated State shall charge fees according to § 800.70.

(7) *Facilities and equipment*—(i) *General.* The laboratory and office facilities of each delegated State shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each delegated State shall test the equipment that it uses for official services according to the instructions.

(8) *Security.* Each delegated State shall provide sufficient security to assure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each delegated State shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for: (i) Recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each delegated State shall maintain the records specified in §§ 800.145 through 800.159.

(g) *Termination*—(1) *Automatic Termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the delegation. The delegation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(2) *Voluntary cancellation.* A State may request that its delegation be canceled by giving 90 days written notice to the Service.

(3) *Revocation*—(i) *Without hearing.* The Administrator may revoke the delegation of a State without first affording the State opportunity for a hearing. Unless otherwise provided, the revocation shall be effective when the State receives a notice from the Service regarding the revocation and the reason(s) therefor.

(ii) *Informal conference.* At the discretion of the Administrator, before the delegation of a State is revoked under paragraph (g)(3)(i) of this section, the Service may (A) notify the State of the proposed action and the reason(s) therefor, and (B) afford the State an opportunity to express its views in an informal conference before the Administrator.

(h) *Provision of services following termination.* If a State's delegation is terminated, official services at the export port locations in the State shall be provided by the Service.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580-0003; paragraphs (f)(2) and (f)(4) were approved under control number 0580-0006)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18988, May 6, 1985]

§ 800.196 Designations.

(a) *General.* Eligible persons or governmental agencies may be designated to perform official services (excluding appeal inspection) within a specified area (other than export port locations).

(b) *Restrictions*—(1) *General.* If official inspection services are performed in an area by a designated agency, Class X and Class Y weighing services in that area may be performed only by the designated agency if the agency applies for designation to provide weighing services and is found qualified by the Service. If the agency designated to provide official inspection services is found not qualified or does not apply, the Class X and Class Y weighing services may be performed by another available agency that is found qualified and is designated by the Service, or the official services may be performed by the Service.

(2) *Interim authority*—(i) *By agency.* A designated agency may perform official services outside its assigned area on an interim basis when authorized by the Service.

(ii) *By Service.* Official inspection services and/or Class X and Class Y weighing services may be performed by the Service in an area (other than export port locations) on an interim basis in accordance with sections 7(h) and 7A(c) of the Act.

(c) *Who can apply.* Any State or local governmental agency or any person may apply, subject to sections 7 and 7A of the Act, to the Service for designation as an official agency to perform official inspection services (excluding appeal inspection) and/or Class X and Class Y weighing services in a given area (other than export port locations) in the United States.

(d) *When and how to apply.* An application for designation should be filed with the Service, according to the provisions of the FEDERAL REGISTER notice which requests applicants for designation to perform official services in existing or new geographic areas. The application for designation: (1) Shall be submitted on a form furnished by the Service; (2) shall be typewritten or legibly written in English; (3) shall show or be accompanied by documents which show all information requested on the form, or otherwise required by the Service; and (4) shall be signed by the applicant or its chief operating officer.

(e) *Review of conditions and criteria for designation*—(1) *Application.* Each application for a designation shall be reviewed to determine whether it complies with paragraph (d) of this section. If an application is not in compliance, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, as determined by the Service, the application may be dismissed. When an application is dismissed, the Service shall notify the applicant, in writing, of the reason(s) for the dismissal.

(2) *Applicant.* Each applicant for authority to operate as as designated agency shall be reviewed to determine whether the applicant meets the conditions and criteria contained in sections 7(f)(1) (A) and (B) of the Act, § 800.199 of the regulations, and paragraph (g) of this section. The requested designation may be granted if the Service determines that: (i) The requested action is consistent with the need for official services; (ii) the applicant meets the conditions and criteria specified in the Act and regulations; and (iii) the applicant is better able than any other applicant to provide official services.

(f) *Area of responsibility*—(1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service.

(2) *Amending.* A request for an amendment to an assigned area of responsibility shall (i) be submitted to the Service in writing; (ii) specify the change desired; (iii) be signed by the applicant or its chief operating officer; and (iv) be accompanied by the fee

prescribed by the Service. The assigned area may be amended if the Service determines that the amendment is consistent with the provisions and objectives of the Act, regulations, and instructions. Upon a finding of need, the Service may initiate action to change an assigned area of responsibility.

(3) *Specified service points.* An agency may change its specified service points by notifying the Service in advance. Interested persons may obtain a list of specified service points within an agency's area of responsibility by contacting the agency. The list shall include all specified service points and shall identify each specified service point which operates on an intermittent or seasonal basis.

(g) *Responsibilities*—(1) *Providing official services.* Insofar as practicable, each agency shall be responsible for providing at all locations in its assigned area each service authorized by the designation. An agency may, subject to Service approval, make arrangements with a neighboring agency to provide official services requested infrequently. The agency shall perform all official services according to the Act, regulations, and instructions in effect at the time of designation or which may be promulgated subsequently.

(2) *Fees.* The agency shall charge fees according to § 800.70.

(3) *Staffing, licensing, and training*—(i) *General.* The agency shall employ sufficient personnel to provide the official services normally requested in an accurate and timely manner. Each agency shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. Each agency shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(ii) *State agencies.* State agencies shall employ official personnel on the basis of job qualifications rather than political affiliations.

(4) *Rotation of personnel.* Where feasible, each agency shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems.

(5) *Supervision.* The agency and its officials shall be responsible for the actions of the official personnel employed by the agency, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities at the agency. The agency shall supervise official activities, in accordance with the Act, regulations, and instructions, and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each agency shall report to the responsible field office information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to agency personnel by Service personnel or by any other person which are inconsistent with the Act, regulations, or instructions.

(6) *Conflict of interest*—(i) *General.* Each agency and any officer, director, stockholder, employee, or other related entity shall not have a conflict of interest, as defined in Section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d). The agency shall advise the Service immediately of any proposed change in name, ownership, officers or directors, or control of the agency and, if a trust, any change affecting the trust agreement.

(ii) *Unofficial activities.* The agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

(7) *Facilities and equipment*—(i) *General.* The laboratory and office facilities of each agency shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each agency shall test the equipment it uses for official services according to the instructions.

(8) *Security.* Each agency shall provide sufficient security to ensure that

official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each agency shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for (i) recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145 through 800.159.

(h) *Termination and renewal*—(1) *Triennial.* (i) *Termination.* A designation shall terminate at a time specified by the Administrator, but not later than 3 years after the effective date of the designation. A notice of triennial termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

(ii) *Renewal.* Designations may be renewed, upon application, in accordance with criteria and procedures for designation prescribed in section 7(f) of the Act and this section of the regulations. The Administrator may decline to renew a designation if: (A) The requesting agency fails to meet or comply with any of the criteria for designation set forth in the Act, regulations, and instructions, of (B) the Administrator determines that another qualified applicant is better able to provide official services in the assigned area.

(2) *Automatic Termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the designation. The designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(3) *Voluntary cancellation.* An agency may request that its designation be canceled by giving 90 days written notice to the Service.

(4) *Suspension or revocation of designation*—(i) *General.* A designation is subject to suspension or revocation, under section 7(g)(3) of the Act, by the Service, whenever the Administrator determines that: (A) The agency has failed to meet one or more of the criteria specified in section 7(f) of the Act or the regulations for the performance of official functions, or otherwise has not complied with any provision of the Act, regulations, or instructions, or (B) has been convicted of any violation of other Federal law involving the handling or official inspection of grain.

(ii) *Summary suspension.* The Service may, without first affording the agency (hereafter referred to in this paragraph as the "respondent") an opportunity for a hearing, suspend a designation or refuse to reinstate a designation when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection and weighing system. A suspension or refusal to reinstate a suspended designation shall be effective upon the respondent's receipt of a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall afford the respondent an opportunity for a hearing under paragraph (h)(4)(iii) of this section. The Service may terminate the action if it finds that alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(iii) *Other than summary suspension.* Except as provided in paragraph (h)(4)(ii) of the section, before the Service revokes or suspends a designation, the respondent shall be: (A) Notified by the Service of the proposed action and the reason(s) therefor, and

(B) afforded an opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H). Before initiating formal adjudicatory proceedings, the Service may, at its discretion, afford the respondent an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If, as a result of the informal conference, a consent agreement is reached, no formal adjudicatory proceedings shall be initiated.

(i) *Provision of services following suspension or termination.* If the designation of an agency is suspended, terminated, or the renewal of a designation is not granted, the Service shall attempt, upon a finding of need, to arrange for a replacement agency. If a qualified replacement agency cannot be designated on a timely basis, a qualified agency, if available, shall be designated on an interim basis. If a qualified agency is not available on an interim basis, the Service shall provide needed services on an interim basis.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580-0003; paragraphs (g)(3) and (g)(5) were approved under control number 0580-0006)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18989, May 6, 1985]

§ 800.197 Approval as a scale testing and certification organization.

(a) *Who may apply.* Any State, local government, or person may request approval to perform scale testing and certification under the Act.

(b) *When and how to apply.* A request for approval to perform scale testing and certification under the Act should be filed with the Service not less than 90 calendar days before the requested action's effective date. A request for approval to perform scale testing and certification shall: (1) Show or be accompanied by documents which show all information required by the Service; (2) certify that each employee scheduled to perform official scale testing and certification services is competent to test weighing equipment and has a working knowledge of the regulations and instructions applicable to such services; (3) be accompanied by the fee prescribed in § 800.71; and (4) be signed by the applicant or its chief operating officer.

(c) *Review of applicant.* The review of an applicant for authority to perform scale testing and certification shall include an evaluation of the applicant's policies and procedures for testing and certifying scales for Class X and Class Y weighing.

(d) *Termination*—(1) *Voluntary.* A scale testing and certification organization may request cancellation of its approval by notifying the Service.

(2) *Suspension or revocation of approval*—(i) *General.* An approval is subject to suspension or revocation whenever the Administrator determines that the approved organization has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(ii) *Summary suspension.* The Service may, without first affording the organization an opportunity for a hearing, suspend an approval or refuse to reinstate an approval when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the approval and considers such action to be in the best interest of the official weighing system.

A suspension or refusal to reinstate a suspended approval shall be effective when the organization receives a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall give the organization an opportunity for a hearing under paragraph (d)(2)(iii) of this section. The Service may terminate its action if it finds that alternative managerial, staffing, or operational arrangements satisfactory to the Service can be and are made by the organization.

(iii) *Other than summary suspension.* Except as provided in paragraph (d)(2)(ii) of this section, before the Service revokes or suspends an approval, the organization shall be notified by the Service of the proposed action and the reason(s) therefor and shall be given an opportunity for a hearing. Before the Service initiates a hearing, it may, at its discretion, give the organization an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If a consent agreement is reached during the informal conference, no formal adjudicatory proceedings shall be initiated.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0580-0003)

[49 FR 30915, Aug. 2, 1984]

§ 800.198 Contracts.

(a) *Services contracted and who may apply.* The Service may enter into a contract with any person, State, or governmental agency to perform on an occasional basis: (1) Specified official sampling, laboratory testing, or other similar objective technical activities involved in the testing of grain for official factors or official criteria, and (2) monitoring activities in foreign ports with respect to export grain that has been inspected and weighed under the Act.

(b) *Restrictions*—(1) *Conflict of interest.* A person, State or governmental agency with a conflict of interest prohibited by section 11 of the Act or § 800.199 shall not be eligible to enter into a contract with the Service.

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.156(d).

(3) *Monitoring services.* Agencies, employees of agencies, organizations, employees of organizations, and other persons that regularly provide official services to persons who export grain from the United States are eligible to enter into a contract with the Service to perform monitoring services on export grain in foreign ports only if they are under Service employees' direct supervision during monitoring activities.

(c) *When and how to apply.* An application for a contractual arrangement shall: (1) Be typewritten or legibly written in English; (2) conform to the invitation to bid or other instructions issued by the Service or be filed on a form furnished by the Service; (3) show or be accompanied by documents which show any information requested by the Service; and (4) be signed by the applicant or its chief operating officer. All contracts shall be issued by the Department and shall follow Departmental procedures.

(d) *Termination and renewal.* A contract with the Service shall terminate annually unless othewise provided in the contract. A contract may be renewed in accordance with Departmental procedures.

(e) *Cancellation.* A contract may, upon request of the governmental agency or person that entered into the contract with the Service, be canceled by the Department in accordance with the terms of the contract or Departmental procedures and regulations.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 0580-0003)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18989, May 6, 1985]

§ 800.199 Conflict-of-interest provisions.

(a) *Meaning of terms.* For the purpose of this section, the following terms shall have the meaning given for them below:

(1) *Grain business.* The term "grain business" shall include (i) any entity that is engaged in the commercial transportation, storage, merchandising or other commercial handling of grain, which includes: The commercial buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain or the disposition of inspection samples); the cleaning, treating, or fitting of carriers or containers for transporting or storing of grain; the merchandising of equipment for cleaning, drying, treating, fumigating, or other processing, handling, or storing of grain; the merchandising of grain inspection and

weighing equipment (other than the buying or selling by an agency or official personnel of the equipment for their exclusive use in the performance of their official inspection or Class X or Class Y weighing services); and the commercial use of official inspection and Class X or Class Y weighing services and (ii) any board of trade, chamber of commerce, grain exchange, or other trade group composed, in whole or in part, of one or more such entities.

(2) *Interest.* The term "interest" when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who resides in the immediate household of the individual.

(3) *Related.* The term "related" when used in reference to a business or governmental entity means an entity that owns or controls another entity, or is owned or controlled by another entity, or both entities are owned or controlled by another entity.

(4) *Substantial stockholder.* The term "substantial stockholder" means any person holding 2 per centum or more, or 100 shares or more of the voting stock of the corporation, whichever is the lesser interest.

(b) *Prohibited conflicts of interest.* Unless waived on a case-by-case basis by the Administrator under section 11(b)(5) or the Act, the following conflicts of interest for a business or association are prohibited:

(1) *Agency and contractor.* No agency or contractor, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency or contractor, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or otherwise have any conflict of interest specified in § 800.187(b).

(2) *Grain business.* No grain business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by, or directly or indirectly have any stock or other financial interest in, any agency or contractor.

(3) *Stockholder in any agency or contractor.* No substantial stockholder in any agency or contractor shall be employed in or otherwise engaged in, or be a substantial stockholder in, any grain business, or directly or indirectly have any other kind of financial interest in any such business or otherwise have any conflict of interest specified in § 800.187(b).

(4) *Stockholder of a grain business.* No substantial stockholder in any grain business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in an incorporated agency or contractor.

(5) *Gratuity.* No person described in paragraph (b)(1) of this section shall give to or accept from a person described in paragraph (b)(2) of this section any gratuity, and no person described in paragraph (b)(2) of this section shall give to or accept from a person described in paragraph (b)(1) of this section any gratuity. A "gratuity" is defined in § 800.187(a).

(c) *Exempt conflicts of interest*—(1) *Agency and contractor.* An agency or contractor may use laboratory or office space or inspection, weighing, transportation, or office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the space or equipment is approved by the Service for the performance of onsite official services under the Act.

(2) *Financial institution.* A bona fide financial institution that has a financial relationship with one or more grain businesses or related entities may have a financial relationship with an agency, contractor, or related agency.

(3) *Grain business.* A grain business or related entity may furnish laboratory or office space or inspection, weighing, transportation, or office equipment for use by an agency, contractor, or field office when use of the space or equipment is approved by the Service for the performance of onsite official inspection or weighing services.

(d) *Disposition of a conflict of interest.* Upon being informed that a prohibited conflict of interest exists in the ownership, management, or operation of an agency and that remedial action is required, the agency shall take immediate action to resolve that conflict of interest and inform the Service of the action taken. An agency which believes that remedial action will cause undue economic hardship or other irreparable harm may request a waiver by forwarding to the Service a written statement setting forth the facts, the circumstances, and the reasons for requesting a waiver.

[49 FR 30915, Aug. 2, 1984]

SUPERVISION, MONITORING, AND EQUIPMENT TESTING

§ 800.215 Activities that shall be supervised.

(a) *General.* Supervision of the activities described in this section shall be performed in accordance with the instructions.

(b) *Administrative activities.* Administrative activities subject to supervision include but are not limited to (1) providing staffing, equipment, and facilities for performing authorized services; (2) dismissing requests for services and withholding requested services; (3) maintaining official records; (4) assessing and collecting fees; (5) rotating official personnel; (6) implementing instructions for (i) recruiting official personnel, (ii) training and supervising official and approved personnel, (iii) work performance and work production standards; and (7) supervising and monitoring.

(c) *Technical activities*—(1) *Equipment testing activities.* Equipment testing activities subject to supervision include but are not limited to (i) implementing (A) the equipment performance requirements in Parts 801 and 802 of this chapter and (B) the instructions for the operation of equipment used under the Act and for performing equipment-testing activities and (ii) performing equipment-testing activities by official personnel or by approved scale testing organizations.

(2) *Inspection activities.* Inspection activities subject to supervision include but are not limited to (i) implementing (A) the Official U.S. Standards for Grain, (B) official criteria, and (C) instructions for the performance of inspection activities and (ii) performing stowage examination, sampling, laboratory testing, grading, and certification activities by official personnel.

(3) *Weighing activities.* Weighing activities subject to supervision include but are not limited to (i) implementing (A) uniform weighing procedures and (B) instructions for the performance of weighing activities and (ii) performing (A) stowage examination, sampling (sacked grain), weighing, and certification activities by official personnel and (B) by approved weighers of weighing activities.

(4) *Testing of prototype equipment activities.* Prototype or proposed equipment is tested to determine whether the equipment will improve the performance of activities under the Act. Prototype equipment-testing activities subject to supervision include but are not limited to (i) implementing instructions for the testing of prototype equipment, (ii) testing prototype equipment by official personnel, and (iii) approving or denying the use of prototype equipment for use under the Act.

§ 800.216 Activities that shall be monitored.

(a) *General.* Each of the administrative and technical activities identified in § 800.215 and the elevator and merchandising activities identified in this section shall be monitored in accordance with the instructions.

(b) *Grain merchandising activities.* Grain merchandising activities subject to monitoring for compliance with the Act include but are not limited to (1) failing to promptly forward an export certificate; (2) describing grain by other than official grades; (3) falsely describing export grain; (4) falsely making or using official certificates, forms, or marks; (5) making false quality or quantity representations about grain; and (6) selling export grain without a certificate of registration.

(c) *Grain handling activities.* Grain handling activities subject to monitoring for compliance with the Act include but are not limited to (1) shipping export grain without inspection or weighing; (2) transferring grain from intercompany barges into an export elevator at an export port location without Class X weighing; (3) violating any Federal law with respect to the handling, weighing, or inspection of grain; (4) deceptively loading, handling, weighing, or sampling grain; and (5) exporting grain without a certificate of registration.

(d) *Recordkeeping activities.* Elevator and merchandising recordkeeping activities subject to monitoring for compliance with the Act include those that are identified in section 12(d) of the Act and § 800.25 of the regulations.

(e) *Other activities.* Other activities subject to monitoring for compliance with the Act include but are not limited to (1) resolving conflicts of interest by official agencies or their employees; (2) providing access to elevator facilities and records; (3) improperly influencing or interfering with official personnel; (4) falsely representing that a person is official personnel; (5) using false means in filing an application for services under the Act; and (6) preventing interested persons from observing the loading, Class X or Class Y weighing, or official sampling of grain.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 50 FR 2273, Jan. 16, 1985]

§ 800.217 Equipment that shall be tested.

(a) *General.* Testing of equipment and prototype equipment described in this section shall be performed in accordance with the instructions.

(b) *Inspection equipment.* Each unit of equipment used in the official sampling, testing, or grading of grain, or in monitoring the official inspection of grain, shall be examined to determine whether the equipment is functioning in an approved manner. In addition, each unit of equipment for which official performance requirements have been established shall be tested for accuracy. For the purpose of this paragraph, diverter-type mechanical samplers used in obtaining warehouseman's samples shall be considered to be official inspection equipment used under the Act.

(c) *Weighing equipment.* Each unit of equipment used in the Class X or Class Y weighing of grain or in monitoring the Class X or Class Y weighing of grain, each related grain handling system, and each related computer system shall be examined to determine whether it is functioning in an approved manner. In addition, each unit of equipment for which official performance requirements have been established shall be tested for accuracy.

(d) *Prototype equipment*—(1) *At request of interested party.* Upon request of a financially interested party and with the concurrence of the Administrator, prototype grain inspection or weighing equipment may be tested by the Service for official use.

(2) *Determination by Service.* Upon a determination of need, the Service may develop, contract for, or purchase and test prototype grain inspection or weighing equipment for official use.

§ 800.218 Review of rejection or disapproval of equipment.

Any person desiring to complain of a rejection or disapproval of equipment by official personnel or of any alleged discrepancy in the testing of equipment under the Act by official personnel or by approved scale testing organizations may file a complaint with the Service.

§ 800.219 Conditional approval on use of equipment.

(a) *Approval.* Equipment that is in use under the Act on the effective date of this section shall be considered conditionally to have been adopted and approved by the Service.

(b) *Limitation on approval.* This conditional approval shall not bar a later rejection or disapproval of the equipment by the Service upon a determination that the equipment (1) should be rejected for official use, or (2) is not functioning in an approved manner, or (3) is not producing results that are accurate within prescribed tolerances, or (4) is producing results that are otherwise not consistent with the objectives of the Act.

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

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AUTHORITY: 39 Stat. 482, as amended; Pub. L. 90-487, 82 Stat. 761; Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 *et seq.*), unless otherwise noted.

SOURCE: 45 FR 15860, Mar. 11, 1980, unless otherwise noted.

§ 801.1 Applicability.

This part prescribes specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing official inspection services.

§ 801.2 Meaning of terms.

(a) *Construction.* Words used in the singular form in this part shall be considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* The definitions of terms listed in the Part 800 shall have the same meaning when the terms are used in this Part 801. For the purposes of this part, the following terms shall have the meanings given for them below.

(1) *Avoirdupois weight.* A unit of weight based on the pound of 16 ounces.

(2) *Balances.* Laboratory devices used to manually, mechanically, or electronically measure and indicate the weight of a sample of grain or related material.

(3) *Barley pearler.* An approved laboratory device used to mechanically dehull kernels of barley or other grain.

(4) *Deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the individual test result from the equipment that is being tested and (ii) the reference standard or the individual test result from the standard (or master) equipment, as applicable.

(5) *Direct comparison method.* An equipment testing procedure wherein samples are tested at the same time and place to compare the performance of two or more units of the same inspection equipment. One unit of the equipment used in the test shall be standard inspection equipment. (See also sample exchange method.)

(6) *Diverter-type mechanical sampler (primary).* An approved heavy-duty device used in accordance with the instructions to obtain representative portions from a flowing stream of grain.

(7) *Diverter-type mechanical sampler (secondary).* An approved heavy-duty device used in accordance with the instructions to subdivide the portions of grain obtained with a diverter-type mechanical sampler (primary).

(8) *Dockage tester.* An approved laboratory device used in accordance with the instructions to mechanically separate dockage and/or foreign material from grain.

(9) *Grain divider.* An approved laboratory device used in accordance with the instructions to mechanically divide a sample of grain into two or more representative portions.

(10) *Maintenance tolerance.* An allowance established by regulation, by the Service, for use in determining whether inspection equipment should be approved for use in performing official inspection services.

(11) *Master inspection equipment.* An approved unit of inspection equipment that is designated by the Service for use in determining the accuracy of standard inspection equipment.

(12) *Mean deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the average of the test results from the equipment that is being tested and (ii) the reference standard or the average of the test results from the standard (or master) equipment, as applicable.

(13) *Metric weight.* A unit of weight based on the kilogram of 1,000 grams.

(14) *Moisture meter.* An approved laboratory device used in accordance with the instructions to electronically measure the moisture content in a sample of grain.

(15) *Official inspection equipment.* Equipment approved by the Service and used by official personnel and approved personnel in performing official inspection services.

(16) *Sample exchange method.* An equipment testing procedure wherein samples are tested to compare the performance of two or more units of the same inspection equipment installed at different locations. One unit of the equipment used in the test shall be standard inspection equipment. (See also direct comparison method.)

(17) *Sieves.* Approved laboratory devices with slots, holes, or oblong or other perforations for use in manually or mechanically separating particles of various sizes in accordance with the instructions.

(18) *Standard inspection equipment.* An approved unit of inspection equipment that is designated by the Service for use in determining the accuracy of official inspection equipment.

(19) *Test weight.* The avoirdupois weight of the grain or other material in a level-full Winchester bushel.

(20) *Test weight apparatus.* An approved laboratory device used in accordance with the instructions to mechanically measure the test weight of grain.

(21) *Winchester bushel.* A container that has a capacity of 2,150.42 cubic inches (32 dry quarts).

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79 and 87e))

[45 FR 15860, Mar. 11, 1980, as amended at 46 FR 40677, Aug. 11, 1981; 47 FR 2980, Jan. 21, 1982]

§ 801.3 Tolerances for balances.

The maintenance tolerances for balances used in performing official inspection services shall be:

Kind of balance	Tolerance [1] (gram)
(a) Precision (for weighing samples of 120 grams or less)	±0.02
(b) Moisture (for weighing moisture samples of 150-300 grams)	±0.20
(c) General (for weighing samples, other than moisture samples, of more than 120 grams)	±1.0

[1] Deviation from standard—weight.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79 and 87e))

[47 FR 2980, Jan. 21, 1982]

§ 801.4 Tolerances for barley pearlers.

The maintenance tolerances for barley pearlers used in performing official inspection services shall be:

Item	Tolerance [1]
(a) Timer switch	0 to 60 seconds ±5 seconds. 61 seconds to 90 seconds ±7 seconds. Over 90 seconds ±10 seconds.
(b) Pearled portion	±1.0 gram (mean deviation from standard).

[1] Deviation from standard—time.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[46 FR 40677, Aug. 11, 1981]

§ 801.5 Tolerances for dockage testers.

The maintenace tolerances for dockage testers used in performing official inspection services shall be:

Item	Tolerance [1]
Air separation	±0.10
Riddle separation	±0.10
Sieve separation	±0.10
Total separation	±0.15

[1] Mean deviation from standard—percent.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[46 FR 40677, Aug. 11, 1981; 46 FR 42440, Aug. 21, 1981]

§ 801.6 Tolerance for diverter-type mechanical samplers.

The maintenance tolerance for diverter-type mechanical samplers (primary, or primary and secondary in combination) used in performing official inspection services shall be ±10 percent mean deviation from standard.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[46 FR 40677, Aug. 11, 1981]

§ 801.7 Tolerances for moisture meters.

The maintenance tolerances for moisture meters used in performing official inspection services shall be:

(a) Federal Grain Inspection Service—Master/Standard meters.

Moisture range	Tolerance[1]	
	Direct comparison	Sample exchange
Low	±0.05	
Mid	±0.05	
High	±0.05	

[1] Mean deviation from standard—percent moisture.

(b) All other than FGIS Master/Standard meters.

Low	±0.15	±0.20
Mid	±0.10	±0.15
High	±0.15	±0.20

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[47 FR 2980, Jan. 21, 1982]

§ 801.8 Tolerances for near-infrared reflectance (NIR) analyzers and Kjeldahl analyses.

(a) *NIR.* The maintenance tolerances for NIR analyzers used in performing official inspection services shall be:

Test	Tolerance[1]	
	Direct comparison	Sample exchange
Protein (wheat):		
Same ground and packed portion	±0.1	
Different portions from same whole grain sample:		
4 sample average		±0.35
20 sample average		±0.20

[1] Mean deviation from standard—percent.

(b) *Kjeldahl.* The maintenance tolerance for Kjeldahl analyses used in performing official inspection services shall be ±0.30 percent mean deviation from standard, 10 samples average.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[46 FR 40677, Aug. 11, 1981]

§ 801.9 Tolerances for sieve devices.

The maintenance tolerances for sieves used in performing official inspection services shall be:

(a) Thickness of metal: ±0.0015 inch

(b) Accuracy of perforation: ±0.001 inch

(c) Sieving accuracy:

Sieve description	Tolerance[1]	
	Direct comparison	Sample exchange
.064 x 3/8 inch oblong	±0.2	±0.3
5/64 x 3/4 inch slotted	±0.3	±0.5
5.5/64 x 3/4 inch slotted	±0.5	±0.7
6/64 x 3/4 inch slotted	±0.7	±1.0

[1] Mean deviation from standard—percent.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[46 FR 40677, Aug. 11, 1981]

§ 801.10 Tolerances for test weight apparatuses.

The maintenance tolerances for test weight per bushel apparatuses shall be:

Item	Tolerance[1]
(a) Beam accuracy	[2]±0.10
(b) Weighing accuracy	[3]±0.15

[1] Deviation from standard—mass.
[2] Pound per bushel at any reading.
[3] Pound per bushel (mean deviation from standard).

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[47 FR 2980, Jan. 21, 1982]

§ 801.11 Tolerances for dividers.

The maintenance tolerances for dividers shall be:

Laboratory ±5 grams (mean deviation from standard).

Modified (Cargo) ±5 grams (mean deviation from standard).

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[46 FR 40678, Aug. 11, 1981]

§ 801.12 Related design requirements.

(a) *Suitability.* The design, construction, and location of official grain sampling and inspection equipment and related sample handling systems shall be suitable for the official sampling and inspection activities for which the equipment will be used.

(b) *Durability.* The design, the construction, and the material used in official grain sampling and inspection equipment and related sample handling systems shall assure that under normal operating conditions (1) operating parts will remain fully operable, (2) adjustments will remain reasonably constant, and (3) accuracy will be maintained between equipment test periods.

(c) *Identification and Marking*—(1) *Identification.* Each item of official sampling and inspection equipment for which tolerances have been established shall be permanently marked to show (i) the manufacturer's name, initials, or trademark; (ii) the serial number of the equipment; and (iii) the identification of the model, the type, and the design or pattern of the equipment.

(2) *Marking.* Each operational control for a diverter-type mechanical sampler and the related grain handling system, including but not limited to pushbuttons and switches, shall be conspicuously identified as to the equipment or activity controlled by the pushbutton or switch.

(d) *Repeatability.* Each unit of inspection equipment when tested in accordance with §§ 800.218 through 800.219 of Part 800 of this chapter shall, within the tolerances prescribed in §§ 801.3 through 801.11, be capable of repeating its recorded results when the equipment is operated in its normal manner.

(e) *Security.* Each diverter-type mechanical sampler and each related sample handling system shall (1) provide a ready means of sealing to block unauthorized (i) adjustments or (ii) removal or changing of component parts or timing sequence without removing or breaking the seals and (2) otherwise be designed, constructed, and installed in a manner to prevent deception to any person.

(f) *Installation requirements*—(1) *manufacturer's instructions.* Grain sampling and inspection equipment and sample handling systems shall be installed at a site approved by the Service in accordance with the Manufacturer's instructions, including any instructions marked on the equipment or systems.

(2) *Foundations and supports.* Equipment and systems shall be so installed that neither the operation nor the performance of the sampling or inspection equipment or system will be adversely affected by the foundation, supports, or any other characteristic of the installation.

(Secs. 8, 18, Pub. L. 94-582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

[45 FR 15860, Mar. 11, 1980, as amended at 46 FR 40678, Aug. 11, 1981]

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN-WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

Sec.

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802.13 Test standards and counterpoise weights.

AUTHORITY: 39 Stat. 482, as amended; Pub. L. 90-487, 82 Stat. 761; Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 *et seq.*).

SOURCE: 45 FR 15862, Mar. 11, 1980, unless otherwise noted.

§ 802.0 Applicability.

The requirements set forth in this Part 802 describe certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X or Class Y weighing services under the Act. The requirements are based on, and are in general agreement with, portions of the "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices" adopted by the National Conference on Weights and Measures and published by the U.S. Department of Commerce, National Bureau of Standards (NBS), as Handbook 44, as well as documents from the Association of American Railroads, Weighing Bureaus, Terminal Grain Weighmasters Association, and other regulatory agencies.

§ 802.1 Meaning of terms.

(a) *Construction.* Words used in the singular form in this subpart shall be considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* The definitions of the terms in the Part 800 will have the same meaning when the terms are used in this Part 802. For the purpose of this part, unless the context requires otherwise, the following terms shall have the meanings given for them below. The terms are shown in alphabetical order.

(1) *Acceptance tolerance.* A magnitude fixing the limit of allowable error or departure from true performance or value, as established by the Service.

(2) *Accurate.* A piece of equipment is "accurate" when its performance or value—that is, its indications, its deliveries, its recorded representations, or its capacity or actual value, etc., as determined by tests made with suitable standards—conforms to the standard within the applicable tolerances and other performance requirements. Equipment that fails so to conform is "inaccurate."

(3) *Analog instrument.* An instrument which produces an output which can assume an infinite number of values within the range of the device; for example, a pointer-type dial.

(4) *Anti-friction point.* A sharp, slight projection formed on the knife-edge line of a pivot or inserted in or attached to a lever for contacting a thrust plate.

(5) *Approach rail.* One of the rails of track approaching a scale.

(6) *Approval seal.* A label, tag, stamped or etched impression, or the like, indicating official approval of a device. (See also security seal.)

(7) *Automatic zero reset.* A means or circuit to return an indicator to zero from any reading within the nominal capacity of the scale. The command can be programmed as required and thus can be automatic as well as operator initiated.

(8) *Avoirdupois weight.* A unit of weight based on the pound of 16 ounces (7000 grains) commonly used in the United States for official weighing of all commodities except precious stones, precious metals, and drugs.

(9) *Balance indicator.* An accessory designed to magnify the indication and to indicate, by means of the relative positions of an indicator and a fixed reference, whether the weight of the applied load is greater or less than, or equal to, the weight indication; sometimes graduated in weight units. It is a reading face of an over-under device, provided with but one graduation positioned approximately at its center.

(10) *Basic tolerance.* Basic tolerances are those tolerances on underregistration and on overregistration, or in excess and in deficiency, that have been established by the Service for a particular device under all normal tests. Basic tolerances include minimum tolerance values when these are specified.

(11) *Capacity.* With respect to a scale, the heaviest specified load that can be applied to the load-receiving element.

(12) *Correct.* A piece of equipment is "correct" when, in addition to being accurate, it meets all applicable specifications and requirements. Equipment that fails to meet any of the requirements for correct equipment is "incorrect."

(13) *Counterpoise weight.* An adjusted, removable, (usually) slotted weight, intended to counterpoise an applied load of designed weight value. Sometimes also colloquially called "counterweight."

(14) *Dampening device.* A device for arresting an oscillation by progressively diminishing its amplitude.

(15) *Dead rail.* Either rail of the independent track provided over a railway track scale for the movement of locomotives and cars not to be weighed.

(16) *Decreasing-load test.* A test of a scale in which the indications are observed as decrements of test load are removed from the load receiving element; usually a test of an automatic-indicating scale made to determine the difference between indications for the same applied load under both increasing load and decreasing load, in which case the entire procedure is sometimes called "lag test."

(17) *Deficiency.* See Excess and deficiency.

(18) *Digital indications (or recordings).* Refers to a system of indicating or recording the selector type or one that advances intermittently in which all values are presented digitally, or in numbers. In a digital indicating or recording element, or in digital representation, there are no graduations.

(19) *Division.* A defining line, or one of the lines defining the subdivisions of a graduated series. The term includes such special forms as raised or indented or scored reference lines and special characters such as dots.

(20) *Electromagnetic interference (EMI).* Electrical disturbances which propagate into electronic and electrical circuits and cause deviations from the normally expected performance. The frequency range of the disturbance covers the entire electromagnetic spectrum.

(21) *Electronic scale.* Any scale in which the restoring force is a transducer which converts force into an electrical signal proportional to weight and presents the information in digital or analog form.

(22) *Excess and deficiency.* When an instrument or device is of such a character that it has a value of its own that can be determined, its error is said to be "in excess" or "in deficiency," depending upon whether its actual value is, respectively, greater or less than its nominal value. Examples of instruments having errors "in excess" are: A linear measure that is too long, a liquid measure that is too large, and a weight that is heavy. Examples of instruments having errors "in deficiency" are: A lubricating-oil bottle that is too small, a vehicle-tank compartment that is too small, and a weight that is light.

(23) *Grain handling system.* The physical arrangement including equipment, devices and structures whereby grain is weighed with one or more scales and delivered or conveyed to a carrier or container, or unloaded from a carrier or container and delivered to one or more scales to be weighed.

(24) *Hopper scale.* A scale designed for the weighing of granular materials in bulk whose load-receiving element is a self-cleaning hopper with an outlet gate.

(25) *Increasing-load test.* A test of a scale in which the indications are observed as increments of test load are added to the load-receiving element.

(26) *Indicating element.* An element incorporated in a weighing or measuring device by means of which its performance relative to quantity is "read" from the device itself as, for example, a weighbeam-and-poise combination, a digital indicator, and the like.

(27) *Interlock.* A mechanism designed to prevent an action or indicate the presence of an occurrence in a scale system or a grain handling system.

(28) *Levertronic scale.* A scale in which the indicating and the recording devices can be activated either manually or electronically and which generally has one load cell mounted in the lever system.

(29) *Load cell.* A device which produces an output signal proportional to the applied load. The load cell may use any physical principle included in the field of, but not limited to, electricity, electronics, hydraulics, magnetics and pneumatics, or combinations thereof.

(30) *Load-receiving element.* That element of a scale which is provided to receive the load to be weighed.

(31) *Maintenance tolerance.* A tolerance for application under test conditions to a device in service; usually applied to errors "as found." Sometimes also called "users' " tolerance.

(32) *Manual scale.* A scale in which the weight-indicating and the weight-recording devices are activated by hand.

(33) *Metric weight.* A unit system of weight based on the kilogram of 1,000 grams.

(34) *Minimum division.* The value of the smallest unit that can be indicated or recorded by a digital device in normal operations.

(35) *Minimum test load.* The minimum allowable weight used for testing the accuracy of a scale.

(36) *Minimum tolerance.* Minimum tolerances are the smallest values that can be applied to a scale. Minimum tolerances are determined on the basis of the value of the minimum graduated interval or the nominal or reading capacity of the scale.

(37) *Mode of operation.* The method of activating a scale-indicating device and a scale-recording device; i.e., manual, automatic, semiautomatic, and the like.

(38) *Motion detection.* The process of sensing a rate of change of applied load to determine when a given weighing system has reacted to a state of equilibrium.

(39) *Multiple.*

(i) Lever Ratio.

(ii) In a lever train, the ratio of the applied load to the counterforce required at a given knife-edge in the train; hence, the product of the ratios of the involved levers.

(iii) With respect to a counterpoise or unit weight, the ratio of the applied load which the weight is intended to counterpoise to the nominal value of the weight.

(40) *Nose iron.* A slidably mounted, manually adjusted pivot assembly for changing the multiple of a lever.

(41) *Official grain weighing equipment or device.* Any scale system used in weighing grain the U.S. Grain Standards Act.

(42) *Out-of-zero balance.* A weight indication, weight representation other than zero when there is no load on the scale load-receiving element.

(43) *Overregistration.* An instrument or device is said to be in the direction of the overregistration when it records or indicates more than the true value of the applied load.

(44) *Parallax.* The apparent displacement, or apparent difference in height or width, of a graduation or other object with respect to a fixed reference, as viewed from different points.

(45) *Pendulum.* In general, a body suspended from a fixed point so as to swing freely to and fro or in an especially restricted sense; and with respect to certain types of scales, an element consisting of a mass and a rigid arm connecting the mass to an axis of rotation.

(46) *Performance requirements.* Performance requirements include all tolerance requirements and, in the case of nonautomatic-indicating scales, sensitivity requirements (SR).

(47) *Platform scale.* A scale whose load-receiving element is a platform.

(48) *Poise.* A movable weight mounted upon or suspended from a weighbeam bar and used in combination with graduations, and frequently with notches, on the bar to indicate weight values.

(49) *Potentiometer.* A resistance unit having a variable or sliding contact which is positioned by the rotation or sliding of a shaft. The motion of the shaft is an indication of that portion of the total resistance which is between the contact and each end of the potentiometer.

(50) *Primary indicating or recording element.* The term "primary" is applied to those principal indicating elements (visual) and recording elements that are designed to, or may, be used by the operator in the normal commercial use of a device. The term "primary" is applied to any element or elements that may be the determining factor in arriving at the representation when the device is used commercially. (Examples of primary elements are the visual indicators for meters or scales not equipped with ticket printers or other recording elements and both the visual indicators and the ticket printers or other recording elements for meters or scales so equipped.) The term "primary" is not applied to such auxiliary elements as, for example, the totaling register or the means for producing a running record of successive weighing operations, these elements being supple-

mentary to those that are the determining factors in representations of individual deliveries or weights.

(51) *Radio frequency interference (RFI).* Radio frequency is a type of electrical disturbance which, when introduced into electronic and electronic circuits, may cause deviations from the normally expected performance.

(52) *Railroad track scale.* A scale especially designed for weighing railway cars.

(53) *Reading edge.* With respect to certain forms of poises, the edge intended as the index.

(54) *Recorded representations.* Refers to the printed, embossed, or other representation that is recorded as a quantity by a weighing or measuring device.

(55) *Recording element.* An element incorporated in a weighing or measuring device by means of which its performance relative to quantity is permanently recorded on a tape, ticket, card, or the like, in the form of a printed, stamped, punched, or perforated representation.

(56) *Repeatability.* The degree of reproducibility among several independent measurements of the same test load under specified conditions.

(57) *Scale (or grain scale).* An instrument designed for use in determining the weight of grain, either in bulk, sacks, or containers, and consisting of a load-receiving device, a weight-indicating device, and a weight-recording device.

(58) *Scale system.* A system for weighing grain, including the scale and all parts of the scale, and all equipment and structures that are immediately associated with, related to, or are in integral part of the system whereby grain is delivered to the scale, is weighed, and is removed from the scale.

(59) *Seal.* See approval seal, security seal.

(60) *Sectional capacity.* The greatest live load which may be divided equally on the load pivots or load cells of a section without inducing stresses in any member in excess of the working stresses allowed for the load cells or levers and materials involved.

(61) *Sectional test.* A test of a scale in which the test load is successively applied substantially at sections of the scale; especially a test of a railway track scale in which a short wheelbase test weight car is spotted at each test position so that the plane of the section is within the wheelbase of the car.

(62) *Security seal.* A lead-and-wire seal, or similar device, attached to a device for protection against access, removal, or adjustment (see also approval seal).

(63) *Sensitivity requirement (SR).* A performance requirement for a nonautomatic indicating scale; specifically, the minimum change in the position of rest of the indicating element of the scale in response to the increase or decrease, by a specified amount, of the test-weight load on the load-receiving element of the scale.

(64) *Specification.* A requirement usually dealing with the design, construction, or marking of a weighing or measuring device. Specifications are primarily directed to the manufacturers of devices.

(65) *Tare mechanism (tare bar).* A weighbeam bar intended primarily for use in setting off or balancing the weight of an empty container, vehicle, etc.

(66) *Tolerance.* A value fixing the limit of allowable error or departure from true performance or value. (See also basic tolerances.)

(67) *Trig loop.* The fixture through which the tip of the weight beam projects in usual construction, designed to restrict vertical angular motion of the weighbeam to designed limits.

(68) *Underregistration.* An instrument or device is said to be in the direction of underregistration when it records or indicates less than the true value of the applied load.

(69) *Unit weights.* A counterpoise weight of a unit weight scale. Sometimes also called "drop weight."

(70) *User requirement.* A requirement dealing with the selection, installation, use, or maintenance of a weighing device. User requirements are primarily directed to the users of devices.

(71) *Vehicle scale.* A scale designed for use in determining the weight of bulk grain in a motorized vehicle or in a trailer drawn by a motorized vehicle.

(72) *Weighbeam.* In a scale of other than the automatic indicating or automatic recording types, the element whose angular position denotes the balance condition. In a more restricted sense, the device or assembly upon which, by the manipulation of poises and/or counterpoise weights, the applied load is counterpoised and its weight value indicated. Sometimes also colloquially called "beam."

(73) *Weighbridge.* In a large-capacity scale, the structural frame carried by the main bearings and which supports the load-receiving element.

(74) *Weight.* (i) The force with which a mass is attracted toward the center of the earth by gravity. The true weight of an object is its weight as determined in a vacuum. The apparent weight in air of an object is its weight determined in air, and is less than the true weight by an amount equal to the true weight of the air displaced by the object.

(ii) An object usually of metal, having a definite mass, designed for weighing or testing purposes, as a counterpoise weight, a test weight, etc.

(75) *Zero adjustment.* In a scale, a process or a means to bring about an accurate zero-load balance.

(76) *Zero-load balance.* (i) Zero-load balance for an automatic-indicating scale is a condition in which: (A) The indicator is at rest at or oscillates through approximately equal arcs above and below the center of a trig loop, (B) the weighbeam or lever system is at rest at or oscillates through approximately equal arcs above and below a horizontal position or a position midway between limiting stops, or (C) the indicator of a balance indicator is at rest at or oscillates through approximately equal arcs on either side of the zero graduation.

(ii) Zero-load balance for a recording scale is a condition in which the scale will record a representation of zero load.

(77) *Zone of uncertainty.* The zone between adjacent increments on a digital device in which the value of either of the adjacent increments may be displayed.

[45 FR 15862, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

§ 802.2 General requirements.

(a) *Identification.* All equipment except weights shall be clearly and permanently marked on a surface visible after installation for purposes of identification with the name, initials, or trademark of the manufacturer and with the manufacturer's designation and nonrepetitive serial number that positively identifies the pattern or the design of the device.

(b) *Facilitation of fraud.* All equipment and all mechanisms and devices attached thereto or used in connection therewith shall be so constructed, assembled, and installed for use that they do not, in the opinion of the Service, facilitate the perpetration of fraud.

(c) *Permanence.* All equipment and markings shall be of such materials, design, and construction as to assure that under normal operating conditions:

(1) Accuracy will be maintained;

(2) Operating parts will continue to function as intended;

(3) Adjustments will remain permanent; and

(4) Graduations, indications, or recorded representations and their defining figures, words and symbols, markings, and instructions shall be distinct and easily readable and of such character that they will not become obliterated or illegible. Undue stresses, deflections, or distortions of parts shall not occur to the extent that accuracy or permanence is detrimentally affected.

(d) *Protection from environmental factors.* The indicating elements, lever system or load cells, and the load-receiving element of a scale shall be adequately protected from environmental factors such as wind, weather, radio frequency (RFI), and electromagnetic interference (EMI) which may adversely affect the operation or performance of the device.

(e) *Abnormal performance.* Unstable indications or other abnormal equipment performance observed during operation shall be brought to the attention of the equipment's owner or owner's representative. If immediate correction cannot be made, the scale shall be taken out of service until corrective action is taken and the accuracy of the scale recertified.

(f) *Adjustments.* Weighing elements or components that are adjustable shall be adjusted only to correct the conditions they are designed to control and shall not be adjusted to compensate for defective and abnormal installation. Any faulty installation conditions shall be corrected before any adjustments are undertaken. Whenever equipment is adjusted, the adjustments shall be made so as to bring performance errors as close as practicable to zero value.

(g) *Suitability of equipment.* Official grain weighing equipment shall be suitable for the operation for which it is to be used and shall conform to the requirements of these regulations as being correct with respect to elements of its design, including but not limited to its weighing capacity; its computing capability; the character, number, size, and location of its indicating or recording elements; and the value of its smallest division.

(h) *Installation.* A device shall be installed in accordance with the manufacturer's instructions, including any instructions marked on the device. A device installed in a fixed location shall be so installed that neither its operation nor its performance will be adversely affected by any characteristic of the foundation, supports, or any other detail of the installation.

(i) *Installation of indicating or recording element.* A device shall be so installed that there is no obstruction between a primary indicating and recording element and the load-receiving element; otherwise, there shall be convenient and permanently installed means for direct communication, oral or visual, between an individual located at a primary indicating or recording element and an individual located at the load-receiving element.

(j) *Method of operation.* Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment. Manufacturers are required to supply complete detailed operating instructions with the equipment and to the Service.

(k) *Associated and nonassociated equipment.* A device shall meet all performance requirements when associated or nonassociated equipment is operated at the same time in its usual and customary manner and location.

(l) *Maintenance of equipment.* All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of the service. Equipment in service at a single place of business found to be in error predominately in a direction favorable to the device user and near the tolerance limits shall not be considered "maintained in a proper operating condition."

(m) *Security.* Each "electronic" or "levertronic" scale and the related grain handling system shall (1) have a ready means of sealing to prevent unauthorized adjustments or removal or changing of component parts and (2) be designed, constructed, and installed in a manner to prevent inaccurate or deceptive weighing.

(n) *Repeatability.* Each scale when operated in accordance with the manufacturer's instructions will be capable of repeating its indicated and recorded weight representations within the tolerances prescribed in § 802.10.

(o) *Interlocks.* To assure correct operation, each automatically operated hopper scale and its related grain handling system shall have operating interlocks to provide for the following:

(1) *Flow of grain.* Grain cannot be cycled and weighed if the weight recording device of the scales is (i) disconnected, (ii) inoperative, or (iii) fails to print the displayed weight.

(2) *Printing.* The weight-recording device on the scale cannot print a weight if either of the gates leading to or from the scale is open.

(3) *Scale.* The scale is operated in the proper sequence of operation in all modes of operation.

(p) *Weight entries to recording devices.* The displayed weight on electronic or levertronic scales shall be entered into automatic recording devices only electronically and directly from the related weighing instrument.

(q) *Retention of visual weight.* All grain weighing devices shall be designed so that the visually indicated weight shall remain visually available to the operator until completion of its printed record.

(r) *Change in mode of operation.* All grain weighing automatic hopper scales shall be designed so that the mode of operation and each change in mode of operation is indicated on the printed record by a symbol, number, or word which clearly designates the mode in which the scale is operated (i.e., A-automatic, M-manual, SA-semiautomatic, 1-automatic, 2-manual, 3-semiautomatic). This requirement becomes effective January 1, 1981, for scales installed after that date; for scales installed on or before January 1, 1981, this requirement becomes effective January 1, 1983.

[45 FR 15862, Mar. 11, 1980, as amended at 45 FR 80985, Dec. 8, 1980; 47 FR 51729, Nov. 17, 1982]

§ 802.3 Design of indicating and recording elements and of recorded representations.

(a) *Indicating and recording elements.* All weighing devices shall be provided with indicating and recording elements appropriate in design and adequate in amount. Primary indications and recorded representations shall be clear, definite, accurate, and easily read under any conditions of normal operation of the device.

(b) *Digital indication and representation.* Digital elements shall be so designed that:

(1) All digital values in a system agree with one another,

(2) A digital value coincides with its associated analog value to the nearest minimum division,

(3) A digital value shall round off to the nearest minimum division that can be indicated or recorded, and

(4) The zone of uncertainty on digital indicating scales shall not be greater than 0.3 of the value of the minimum operating division.

(c) *Analog and digital indications.* All components of the same element used in combination (such as a dial and unit weight) shall not differ by an amount greater than the applicable tolerance at any given test load.

(d) *Capacity indication.* When the load applied to the load-receiving element is in excess of 105 percent of the capacity of the system:

(1) The digital indicating element shall not display any weight values;

(2) The recorded representation, if any, shall clearly indicate that the system is in an overload condition; i.e., "Overload." THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

(e) *Size and character.* In any series of divisions, indications, or recorded representations, corresponding divisions and units shall be uniform in size and character. Divisions, indications, or recorded representations which are subordinate to or of a lesser value than others with which they are associated shall be appropriately portrayed or designated.

(f) *Values.* If divisions, indications, or recorded representations are intended to have specific values, these shall be adequately defined by a sufficient number of figures, words, symbols, or combinations thereof; uniformly placed with reference to the divisions, indications, or recorded representations; and as close thereto as practicable, but not so positioned as to interfere with the accuracy of reading.

(g) *Values of graduated intervals or increments.* In any series of divisions, indications, or recorded representations, the values of the graduated intervals or increments shall be uniform throughout the series.

(h) *Repeatability of indications.* A device shall be capable of repeating within prescribed tolerances its indicated and recorded representations. This requirement shall be met irrespective of repeated manipulation of any element of the device in a manner approximating normal usage (including displacement of the indicating elements to the full extent allowed by the construction of the device and repeated operation of a locking or relieving mechanism) and of the repeated performance of steps or operations that are embraced in the testing procedure.

(i) *Recorded representations.* Insofar as they are appropriate, the requirements for indicating and recording elements shall be applicable also to recorded representations. All recorded values shall be printed digitally.

(j) *Remote indications and recorded representations.* Remote indications and recorded representations shall be clear, definite, accurate, and easily read under any conditions of normal operation of the device and shall agree with primary indications.

(k) *Marking operational controls, indications, and features.* All operational controls, indications, and features, including but not limited to switches, lights, displays, pushbuttons, and other means, shall be clearly and definitely identified.

(l) *Zero indication.* Provision shall be made on all scales equipped with indicating or recording elements to indicate and record a zero-balance condition, and on an automatic-indicating scale or balance indicator to indicate or record an out-of-balance condition on both sides of zero. A digital zero indication shall represent a balance condition that is within plus or minus one-half the value of the minimum division that can be indicated and recorded.

(m) *Dial divisions.* Dial divisions shall be so varied in length that they may be conveniently read.

(n) *Width-dial graduation.* In any series of graduations, the width of a graduation shall in no case be greater than the width of the minimum clear interval between graduations, and the width of main graduations shall be not more than 50 percent greater than the width of subordinate graduations. Graduations shall in no case be less than 0.008 inch in width.

(o) *Dial divisions—clear interval between divisions.* The clear interval shall be not less than 0.03 inch for each division. If the divisions are not parallel, the measurement shall be made:

(1) Along the line of relative movement between the divisions and the end of the indicator; or

(2) If the indicator is continuous, at the point of widest separation of the divisions.

(p) *Dial indicator symmetry.* The index of an indicator shall be symmetrical with respect to the divisions with which it is associated and at least throughout that portion of its length that is associated with the divisions.

(q) *Dial indicator length.* The index of an indicator shall reach the finest divisions with which it is used, unless the indicator and the divisions are in the same plane, in which case the distance between the end of the indicator and the ends of the divisions, measured along the line of the divisions, shall be not more than 0.04 inch.

(r) *Dial indicator width.* The width of the index of an indicator in relation to the series of divisions with which it is used shall be not greater than: (1) The width of the widest division; (2) the width of the minimum clear interval between weight divisions. When the index of an indicator extends along the entire length of a division, that portion of the index of the indicator that may be brought into coincidence with the division shall be of the same width throughout the length of the index that coincides with the division.

(s) *Dial indicator clearance.* The clearance between the index of an indicator and the divisions shall in no case be more than 0.06 inch.

(t) *Parallax.* Parallax effects shall be reduced to the practicable minimum.

(u) *Dial weight ranges and unit weights.* The total value of weight ranges and of unit weights in effect or in place at any time shall automatically be accounted for on the reading face and on any recorded representations.

(v) *Minimum division.* Weight indicating and weight recording devices on scales used in the weighing of grain shall indicate and record in avoirdupois weight. The value of the minimum division on such devices shall be no greater than:

Capacity of scale	Minimum division (pounds)
(1) Hopper, Vehicle, and Railroad Track Scales	
0 to 10,000 lbs inclusive	1
Greater than 10,000 to 20,000 lbs inclusive	2
Greater than 20,000 to 50,000 lbs inclusive	5
Greater than 50,000 to 100,000 lbs inclusive	10
Greater than 100,000 to 200,000 lbs inclusive	20
Greater than 200,000 to 500,000 lbs inclusive	50
(2) Portable Platform Scale	
0 to 100 lbs inclusive	0.01
Greater than 100 to 200 lbs inclusive	0.02
Greater than 200 to 500 lbs inclusive	0.05

THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

§ 802.4 Design of balance, tare, dampening, and arresting mechanisms.

(a) *Zero load; adjustment.* A manual scale shall be equipped with means by which the zero-load balance may be adjusted, and any loose material used for this purpose shall be so enclosed that it cannot shift in position in such a way that the balance condition of the scale is altered. A balance ball shall not itself be rotatable unless it is automatic in operation or is enclosed in a cabinet.

(b) *Automatic zero setting devices.* An electronic mechanism designed to be manually operated to provide an automatic zero-balance condition; i.e., "push button zero," shall be operable or accessible only by a tool outside of and entirely separate from this mechanism, or enclosed in a cabinet or operable only when the indication is stable within:

(1) Plus or minus 1 division for systems of 5000 pounds capacity or less; and

(2) Plus or minus 3 divisions for systems of more than 5000 pounds capacity. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

(c) *Automatic means to maintain a digital zero-balance indication (AZM).* Scales designed with automatic means to maintain a digital zero-balance indication shall be provided with means to meet the requirements of § 802.3(l), Zero indication, and § 802.3(d), Capacity indication. However, under normal operating conditions with the scale indicating zero, the maximum load, when placed immediately on the platform, which can be "rezeroed" without indicating a weight value shall be:

(1) For scales with 2500 scale divisions or less, ±1.0 scale division;

(2) For scales with more than 2500 scale divisions, ±3.0 scale divisions.

Automatic zero maintenance is *prohibited* in hopper scales. On scales equipped with automatic zero maintenance, provisions shall be made for disabling the AZM feature when testing the device. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

(d) *Tare mechanism.* The tare mechanism shall operate only in a backward direction (that is, in the direction of underregistration) with respect to the zero-load balance condition of the scale.

(e) *Balance indicator.* On a balance indicator consisting of two indicating edges, lines, or points, the ends of the indicators shall be sharply defined and shall be separated by not more than 0.04 inch, measured horizontally, when the scale is in balance.

(f) *Dampening means.* An automatic-indicating scale and balance indicator shall be equipped with effective means for dampening the oscillations whenever such means are necessary to bring the indicating elements quickly to rest.

(g) *Motion detection.* Electronic indicating elements shall be equipped with effective means to permit the recording of weight values only when the indication is stable within: (1) Plus or minus 1 division for systems of 5000 pounds capacity or less; and (2) plus or minus 3 divisions for systems of more than 5000 pounds capacity.

The values recorded shall be within applicable tolerances. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

§ 802.5 Design of weighing elements.

(a) *Antifriction elements.* At all points at which a live part of the mechanism may come into contact with another part in the course of normal usage, frictional effects shall be reduced to a minimum by means of suitable antifriction elements, opposing surfaces and points being properly shaped, finished, and hardened.

(b) *Adjustable components.* An adjustable component such as a nose iron, pendulum, spring, or potentiometer shall be held securely in adjustment. The position of a nose iron on a scale of more than 2000 pounds capacity, as determined by the factory adjustment, shall be accurately, clearly, and permanently defined.

(c) *Multiple load-receiving elements.* A scale with a single indicating and recording element, or a combination indicating-recording element, that is coupled to two or more load-receiving elements with independent weighing systems shall be provided with automatic means to indicate and record clearly and definitely which load-receiving element (or elements) is in use. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

§ 802.6 Design of weighbeams and poises.

(a) *Normal balance position.* The normal balance position of the weighbeam of a beam scale shall be horizontal.

(b) *Weighbeam travel.* The weighbeam of a beam scale shall have equal travel above and below the horizontal. The total travel of the weighbeam of a beam scale in a trig loop or between other limiting stops near the weighbeam tip shall be not less than the minimum travel shown in the table below. When the limiting stops are not provided, the total travel at the weighbeam tip shall be not less than 8 pecent of the distance from the weighbeam fulcrum to the weighbeam tip.

MINIMUM TRAVEL OF WEIGHBEAM OF BEAM SCALE BETWEEN LIMITING STOPS

Distance from weighbeam fulcrum to limiting stops	Minimum travel between limiting stops (inch)
Inches:	
12 or less	0.4
13 to 20, incl	.5
21 to 40, incl	.7
Over 40	.9

(c) *Weighbeam subdivision.* A subdivided weighbeam shall be subdivided by means of graduations, notches, or a combination of both. Graduation on a particular bar shall be of uniform width and perpendicular to the top edge of the bar. Notches on a particular bar shall be uniform in shape and dimensions and perpendicular to the face of the bar. When a combination of graduations and notches is employed, the graduations shall be positioned in relation to the notches so as to indicate notch values clearly and accurately.

(d) *Readability.* A subdivided weighbeam bar shall be subdivided and marked, and a weighbeam poise shall be constructed so that the weight corresponding to any normal poise position can easily and accurately be read directly from the beam, whether or not provision is made for the optional recording of representations of weight.

(e) *Poise stop.* Except on a steelyard with no zero graduation, a shoulder or stop shall be provided on each weighbeam bar to prevent a poise from traveling and remaining back of the zero graduation.

(f) *Poises.* No part of a poise shall be readily detachable. A locking screw shall be perpendicular to the longitudinal axis of the weighbeam and shall not be removable. Except on a steelyard with no zero graduation, a poise shall not be readily removable from a weighbeam. The knife-edge of a hanging poise shall be hard and sharp and constructed so as to allow the poise to swing freely on the bearing surfaces in the weighbeam notches.

(g) *Poise adjusting material.* The adjusting material in a poise shall be securely enclosed and firmly fixed in position, and if softer than brass it shall not be in contact with the weighbeam.

(h) *Poise pawl.* A poise, other than a hanging poise, on a notched weighbeam bar shall have a pawl that will seat the poise in a definite and correct position in any notch, wherever in the notch the pawl is placed, and hold it there firmly and without appreciable movement. That dimension of the tip of the pawl that is transverse to the longitudinal axis of the weighbeam shall be at least equal to the corresponding dimension of the notches.

(i) *Reading edge or indicator.* The reading edge or indicator of a poise shall be sharply defined and shall be parallel to the graduations on the weighbeam.

§ 802.7 Marking requirements.

(a) *Capacity.* The capacity shall be conspicuously marked as follows:

(1) On any scale equipped with unit weights or weight ranges;

(2) On any scale with which counterpoise or equal-arm weights are intended to be used;

(3) On any automatic-indicating or recording scale so constructed that the capacities of the several individual indicating and recording elements are not immediately apparent;

(4) On any scale with a capacity less than the sum of the reading elements.

(b) *Vehicle and railroad track scales.* A vehicle or railroad track scale shall be marked with the maximum capacity of each section of the load-receiving element of the scale. The marking shall be accurately and conspicuously presented on or adjacent to the indicating element of the scale. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

(c) *Weighing elements.* An indicating element not permanently attached to a weighing element shall be clearly and permanently marked for the purpose of identification with the name, initials, or trademark of the manufacturer; the manufacturer's designation that positively identifies the pattern or design; and the capacity. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

§ 802.8 Installation requirements.

(a) *Foundation, supports, and clearance.* The foundation and supports of any scale installed in a fixed location shall provide strength, rigidity, and permanence of all components, and clearance shall be provided around all live parts to the extent that no contact may result when the load-receiving element is empty and throughout the weighing range of the scale. On a motor truck scale, the clearance between the load-receiving elements and the coping at the bottom edge of the platform shall be greater than at the top edge of the platform. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

(b) *Access to pit.* Adequate provision shall be made for ready access to the pit of a vehicle or railroad track scale for purposes of inspection and maintenance. Provisions shall be provided to lock or security seal all accesses to the pit.

(c) *Approaches to vehicle scales.* On the approach end or ends of a vehicle scale there shall be a straight approach in the same plane as the platform. The approach shall be at least the same width as the platform and at least one-half the length of the platform. Not less than 10 feet of any approach adjacent to the platform shall be constructed of concrete or similar durable material. However, grating of sufficient strength to withstand all loads may be installed in this portion; and further, where considered necessary for drainage purposes, the remaining portion of the approach may slope slightly. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

(d) *Lifts.* On motor vehicle and railroad track scales equipped with means for raising the load-receiving element from the weighing element for vehicle unloading, suitable means shall be provided so that it is readily apparent to the weigher when the load-receiving element is in its designed weighing position. The printer shall not be operable until the load-receiving element is in its designed weighing position. THIS REQUIREMENT BECOMES ENFORCEABLE AS OF JANUARY 1, 1981.

§ 802.9 User requirements.

(a) *Balance condition.* The zero-load adjustment of a scale shall be maintained so that, with no load on the load-receiving element and with all load-counterbalancing elements of the scale such as poises, drop weigths, or counterbalancing weights set to zero, the scale shall indicate or record a zero-balance condition. This requirement shall not apply to scales operated in such a manner as to obtain a net weight based on gross and tare weighings.

(b) *Scale modifications.* Neither the length, nor the width, nor the height of the load-receiving element of a scale shall be increased beyond the manufacturer's design dimension; nor shall the capacity of a scale be increased beyond its design capacity by replacing or modifying the original primary indicating or recording element with one of a higher capacity; nor shall any other modification be made, except when the modification has been approved by competent engineering authority, preferably that of the engineering department of the manufacturer of the scale and by the Service.

(c) *Split or double draft static weighing.* A vehicle or a coupled vehicle combination or a railroad car shall be officially weighed statically on a vehicle or railroad track scale only as a single draft. That is, the total weight of such a vehicle or combination shall not be determined by adding together the results obtained by separately and not simultaneously weighing each end of the vehicle or individual elements of the coupled combination. However:

(1) The weight of a coupled combination may be determined by uncoupling the various elements (tractor, semi-trailer, trailer), statically weighing each unit separately as a single draft, and adding together the results; and

(2) The weight of a vehicle or coupled-vehicle combination may be determined by adding together the weights obtained while all individual elements are resting simultaneously on more than one scale platform.

(d) *Official testing and certification.* All official testing shall be performed in accordance with the appropriate chapters of the weighing handbook. Official certification and application of approval seal shall be made only by the Service.

(e) *Railroad track scales; alignment of dead and weigh rails.* Dead rails should be provided for all scales where designed capacity does not correspond with the greatest combined load likely to run over scale rails. Weigh rails should be on the offset line and the dead rails should be straight unless a large portion of the cars is to be weighed. For motion weighing, the offset should be divided unless the resistance is equalized by means of a spring switch.

(f) *Standing of equipment and keeping scales under load.* Equipment shall not be allowed to stand on the platform of a vehicle or railroad track scale except when being weighed and, in the case of hopper scales, grain shall not be stored or left in a hopper scale for extended lengths of time.

(g) *Altering poises and counterpoise weights.* After a poise or counterpoise weight has been sealed, no material shall be added or removed without the approval of the Service and an official test conducted to recertify the scale.

(h) *Hopper scale venting.* All hopper scales used for Class X or Class Y grain weighing shall be vented so that any internal or external pressure will not affect the accuracy or operation of the scale.

(i) *Minimum test load.* The minimum amount of certified test weight required for testing shall be:

(1) Hopper scales—10% of capacity.

(2) Vehicle scales—20,000 lbs.

(3) Railroad track scales—50,000 lbs.

(4) Portable scales (up to 500 lbs.)—100% of capacity.

(j) *Assistance in testing.* If the design, construction, or location of any scale is such as to require a testing procedure involving special equipment, accessories, or an abnormal amount of vapor, the equipment, accessories, and labor shall be supplied by the owner or operator of the device. Test weights calibrated to service specifications and in the amount required by paragraph (i) of this section shall be supplied by the scale owner or operator.

(k) *Hopper scale working range.* A hopper scale shall normally be used in the working range of the scale, which is considered to be from half capacity to the capacity of the scale. Exceptions shall be made for certain special circumstances such as completing the loading of a particular hold or a vessel, load-trimming a vessel, or other similar circumstances. Under no circumstances shall the hopper capacity be less than 1,000 pounds.

(l) *Vehicle scale minimum load.* A vehicle scale shall not be used to weigh a gross load of less than 1,000 pounds.

§ 802.10 Tolerances and sensitivity requirements.

(a) *Application.* Tolerances described herein are applicable to all scales under jurisdiction of the Service and for all tests.

(b) *Tolerance values.* The applicable tolerances are established as follows:

Types of scale	Maintenance tolerance	Acceptance tolerance
(1) Hopper scale	0.05 pct × the applied test load or the minimum tolerance value, whichever is greater.	0.05 pct × the applied test load or the minimum tolerance value, whichever is greater.
(2) Motor vehicle scale	0.1 pct × the applied test load or the minimum tolerance value, whichever is greater.	0.05 pct × the applied test load or the minimum tolerance value, whichever is greater.
(3) Railroad track scale	0.1 pct × the applied test load or the minimum tolerance value, whichever is greater.	0.05 pct × the applied test load or the minimum tolerance value, whichever is greater.
(4) Portable platform:		

Test load		Maintenance tolerances expressed—		Acceptance tolerances expressed—	
From—	To but not including—	In ounces	In pounds	In ounces	In pounds
Pounds:					
1	2	1/16	0.004	1/32	0.002
2	4	1/8	.008	1/16	.004
4	7	3/16	.012	3/32	.006
7	10	1/4	.016	1/8	.008
10	15	5/16	.020	5/32	.010
15	20	3/8	.023	3/16	.012
20	30	1/2	.031	1/4	.016
30	40	5/8	.039	5/16	.020
40	50	3/4	.047	3/8	.023
50	75	1	.062	1/2	.031
75	100	1 1/2	.094	3/4	.047
100	150	2	.125	1	.062
150	200	3	.188	1 1/2	.094
200	300	4	.250	2	.125
300	400	6	.375	3	.188
400	600	8	.500	4	.250
600	800	12	.750	6	.375
800	1,000	14	.875	7	.438
(1)	(1)	(2)	(2)	(3)	(3)

[1] 1,000 and over.
[2] 0.1 percent of test load.
[3] 0.05 percent of test load.

(c) *Minimum tolerance.* The minimum tolerances that may be applied are established as follows:

(1) *Hopper and vehicle.* The minimum tolerance that may be applied shall not be smaller than one-half the minimum division.

(2) *Railroad track scales.* The minimum tolerance that may be applied shall not be smaller than 25 pounds.

(3) *Portable platform scales.* The minimum tolerance that may be applied shall not be smaller than:

Nominal capacity for non-automatic-indicating scales or reading-face capacity for automatic-indicating scales	Minimum tolerance value expressed—	
	In ounces	In pounds
Pounds:		
0 to 4, inclusive	1/32	0.002
5 to 10, inclusive	1/16	.004
11 to 20, inclusive	1/8	.008
21 to 30, inclusive	3/16	.012
31 to 50, inclusive	1/2	.031
51 to 100, inclusive	3/4	.047
101 to 150, inclusive	1 1/4	.078
151 to 250, inclusive	2	.125
251 to 500, inclusive	4	.250
501 to 1,000, inclusive	8	.500

(d) *Tests involving digital indications or representations.* To the tolerances that would otherwise be applied, there shall be added an amount equal to one-half the minimum value that can be indicated or recorded.

(e) *Acceptance tolerances.* Acceptance tolerances shall apply as follows:

(1) To any newly installed scale about to be used for Class X or Class Y grain weighing for the first time;

(2) To a scale that is being returned to Class X or Class Y grain weighing following official rejection for failure to conform to performance requirements; and

(3) To equipment that is being officially tested for the first time after reconditioning or overhaul.

(f) *Maintenance tolerance.* Maintenance tolerance shall apply to equipment in actual use, except as provided for under acceptance tolerances.

(g) *Excess and deficiency.* Tolerances "in excess" and tolerances "in deficiency" shall apply to errors in excess and to errors in deficiency, respectively.

(h) *To scales with multiple elements.* Tolerances shall be applied independently to each indicating and recording element of a scale. However, the following requirements pertaining to analog and digital elements shall also apply:

(1) All analog indications within the same element shall not differ from one another, and all digital elements shall not differ from one another;

(2) All analog indications and representations shall not differ from digital indications and recorded representations by an amount greater than the value of the minimum increment on the device, except the elements shall not differ under a no-load zero-balance condition; and

(3) All components of the same element used in combination (such as a dial with unit weights) shall not differ by an amount greater than the applicable tolerance at any given test load.

(i) *To shift tests.* Basic tolerances shall be applied.

(j) *To increasing load tests.* Basic tolerances shall be applied.

(k) *To decreasing load tests on automatic indicating scales.* One and one-half times basic tolerance shall be applied.

(l) *To ratio tests.* Three-fourths of basic tolerances shall be applied.

(m) *To sectional tests on vehicle and railroad track scales.* The maximum deviation between indicated values on test loads applied to individual sections shall not be greater than the absolute value of the maintenance tolerance applicable to that test load.

(n) *To railroad track scales weighing uncoupled-in-motion cars.* The basic maintenance and acceptance tolerance shall be the same as the basic tolerances for railroad track scales stated in paragraph (b)(3) of this section.

(o) *Sensitivity requirement (SR)*—(1) *Hopper scales not equipped with balance indicator.* The SR shall be twice the value of the minimum division of the weighbeam or 0.2 percent of the capacity of the scale, whichever is less.

(2) *Hopper scales equipped with balance indicator.* The SR shall be the value of the minimum division of the weighbeam.

(3) *Vehicle scales not equipped with balance indicator.* The SR shall be twice the value of the minimum division of the weighbeam or 0.2 percent of the capacity of the scale, whichever is less.

(4) *Vehicle scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

(5) *Railroad track scales not equipped with balance indicator.* The SR shall be three times the value of the minimum division of the weighbeam or 100 pounds, whichever is less.

(6) *Railroad track scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

(7) *Portable platform scale not equipped with balance indicator.* The SR shall be twice the value of the minimum division or 0.2 percent of the capacity of the scale, whichever is less.

(8) *Portable platform scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

[45 FR 15862, Mar. 11, 1980; 45 FR 55120, Aug. 18, 1980]

§ 802.11 Weight-indicating and weight-recording devices and representations.

(a) *General requirements.* Each grain scale, except portable platform scales, shall be equipped with a weight-recording device.

(b) *Readability.* Primary and remote indications of the weight of grain and printed representations of the weight of grain shall be clear, definite, accurate, and easily read under normal operating conditions.

(c) *Tape printers.* Tape printers on automatic indicating scales shall be designed to produce a minimum of an original and one copy of the printed record.

(d) *Ticket printers.* Ticket printers on automatic indicating scales shall be designed to produce an original and five copies of the printed record. Ticket printers on nonautomatic indicating scales shall be designed to produce an original and one copy of the printed record.

(e) *Multiple weight-indicating and recording devices.* If a scale has more than one weight-indicating and one weight-recording device, the values indicated by each of the devices and the weights printed by each of the devices shall be in agreement.

(f) *Recorded weight identification.* Gross weight, tare weight, net weight, subtotal, and total printed representations shall either be identified by a symbol clearly and accurately identifying the type weight printed; example, G-Gross, T-Tare, N-Net, ST-Subtotal, TO-Total, or shall be identified as such, on the ticket or tape on which they are printed.

§ 802.12 Railroad track scales; additional requirements.

(a) *Rated sectional capacity.* The rated sectional capacity of a full load-cell scale shall be one of the following and shall employ load cells in capacities as shown:

Sectional capacity (tons)	Each load-cell rated capacity (pounds)
Track scale:	
85	100,000
180	200,000

The rated sectional capacity shall in no case exceed the actual sectional capacity.

(b) *Nose-iron guides.* The guides for all nose irons shall be such that when one is moved for the purpose of adjustment, the pivot will be held parallel to its original position. For cast iron levers, the guide and ways shall be machined.

(c) *Leveling lugs.* In scales of the straight lever type, each lever shall be provided with leveling lugs for longitudinal alignment. In scales of the torsion lever type, leveling lugs shall be provided on the pipe or torsion member for transverse alignment and on the extension arm for longitudinal alignment. Each pair of lugs shall be spaced 11 inches apart. The leveling surfaces of each pair of lugs shall be finished to a common plane, which shall be parallel to the plane through the knife-edges of the end pivots.

(d) *Truss rods.* Truss rods shall not be used in parts of the lever system except to stiffen levers laterally or to prevent whipping and vibration due to impact. Truss rods designed as part of a lever structure to support vertically applied loads will not be permitted.

(e) *Marking of levers.* Figures denoting the ratio of each lever shall be cast or otherwise permanently marked on the lever.

(f) *Pivots and bearings; material.* The material to be used for pivots and bearings shall be alloy steel (SAE 52100), or a steel which will give equivalent performance, hardened to Rockwell C scale not less than 58 or more than 62.

(g) *Design and maintenance.* Pivots shall be so formed that the included angle of the sides forming the knife-edge will not exceed 90 degrees and that the offset of the knife-edge from the center line of the pivot will not exceed 10 percent of the width of the pivot.

(h) *Mounting*—(1) *Fastening.* Pivots shall be firmly fastened in position without swagging or caulking.

(2) *Machined-in pivots, when required.* For scales of greater sectional capacity than 50 tons, main lever pivots shall be machine finished and fitted into machined ways.

(3) *Continuous contact required.* Pivots shall be mounted so that continuous contact of the knife-edges with their respective bearings for the full length of the parts designed to be in contact will be obtained; in loop bearings the knife-edges shall project slightly beyond the bearings in the loops.

(i) *Position.* In any lever the pivots shall be mounted so that:

(1) Each knife-edge will be maintained in a horizontal plane under any load within the capacity of the scale;

(2) A plane bisecting the angle of a knife-edge will be perpendicular to the plane through the knife-edges of the end pivots;

(3) The actual distance between the end knife-edges of any lever will not differ from the nominal distance by more than 1/64 inch per ft.; and

(4) The knife-edges in any lever will be parallel.

(j) *Support for projecting pivots.* The reinforcement on the levers to support projecting pivots shall be tapered off to prevent accumulation of dirt next to the pivots and to provide proper clearance.

(k) *Fulcrum distances.* The minimum distance between the fulcrum pivot knife-edge and the load pivot knife-edge in main levers of scales of 75 tons sectional capacity or less shall be 6.5 inches. In scales of greater than 75 tons sectional capacity, the minimum distance shall be 8 inches.

(l) *Design of bearings.* Bearing steels and the parts supporting or containing them shall be so applied to the mechanism that permissible movement of the platform will not displace the line of contact between any bearing and the opposing pivot.

(m) *Nose iron design.* Nose irons shall be constructed so that:

(1) They will be positioned by means of adjusting screws of standard size and thread;

(2) They will be retained in position by means of screws or bolts of standard size and thread;

(3) The surfaces of nose irons intended to be in slidable contact with the levers will be machined true, so as to secure fit in or on the levers;

(4) When adjustments are made, the knife-edge will be held parallel to its normal position.

(n) *Screws and bolts.* Adjusting and retaining screws and bolts shall be made of a corrosion-resistant material.

(o) *Retaining device.* A device for retaining each nose iron in position shall be provided and shall be designed and constructed so that it will:

(1) Be independent of the means provided for adjustments;

(2) Not cause indentations in the lever;

(3) Not cause tension in the remaining bolts when loads are applied to the scale;

(4) Cause the nose iron to remain in position when the retaining device is released.

(p) *Lever fulcrum stands; quality of materials.* Castings of structural steel for lever stands shall be clean, smooth, and uniform and castings shall be free of blisters, blow holes, shrinkage holes, and cracks.

(q) *Loops and connections; material.* The requirements for material and hardness of bearing surfaces in loop connections shall be the same as those herein prescribed for pivots and bearings.

(r) *Identification of parts.* Each weighbeam shall be given a serial number which shall be stamped on the weighbeam. The pivots, poises, and fractional bar shall have stamped upon them identification marks to show to which weighbeam each belongs, and the pivots shall be marked so as to indicate their proper positions in the weighbeam.

(s) *Factory adjustment or notches.* Each weighbeam notch shall be adjusted to within 0.002 inches of the nominal distance from the zero notch.

(t) *Trig loop.* The play of the weighbeam in the trig loop shall be not more than 2 percent of the distance from the trig to the fulcrum pivot, not less than 0.9 inches. The weighbeam shall be fitted with an indicator to be used in conjunction with a graduated target or other device on the trig loop to indicate a central position in the trig loop when the weighbeam is horizontal.

(u) *Weighbeam support.* The weighbeam fulcrum stand and trig loop stand shall be supported on a metal shelf mounted on metal pillars or material equivalent in strength and durability. The shelf shall be sufficiently rigid that, within the capacity of the scale, deflection cannot occur to such an extent as will affect the weighing performance.

(v) *Weighbridge girders.* Weighbridge girders shall be designed so that the joints over the centers of bearing will admit vertical flexure without deranging the sections. On short axle weighbridges no tipping of the weighbridges will be allowed.

(w) *Weighbridge bearings.* The surfaces of weighbridge bearings intended to make contact with the bridge girders shall be finished so that, when in position, all the bearing surfaces will be within 1/32 inch of the same horizontal plane and parallel to it. To secure proper alignment of parts, the diameters of the bolt holes in the weighbridge bearings and in the girders shall exceed the diameter of the bolts fastening the bearings to the girders by ½ inch.

(x) *Concrete bearing surfaces.* Bearing stresses on concrete shall not exceed 300 psi under load-cell bearing plates and lever stands and 400 psi at all other points.

(y) *Stresses*—(1) *Steel.* To allow for impact and normal pit conditions, all steel design stress in scale weighbridges shall be limited to 10,000 psi, and maximum deflection in main weighbridge beams or girders shall not exceed 1/1200 of the span between sections.

(2) *Cast Iron.* In designing cast iron members, the maximum allowable unit stress of any character shall be determined by the greatest thickness, exclusive of fillets, of the portion of the section carrying the stress being considered. In the main portion of a beam the thickness of the web or flange shall be used, whichever is the greater. The thickness of the flange shall be considered either as the average depth of the outstanding portion or the breadth of flange outside to outside, whichever is less.

(z) *Weighrails—length and weight.* The weight and section of weighrails shall be as large as is consistent with surrounding yard track conditions, but no less than 112 pounds per yard. Rails shall be one piece full length of scale.

(aa) *Clearance along weighrails.* The clearance between weighrails or their pedestals and the rigid deck shall be less than 1½ inches unless other adequate provision for clearance is made, and the openings shall be protected from weather and dirt.

(bb) *Approach rails.* Positive means shall be provided to prevent creeping of approach rails and to maintain a clearance which shall be not less than ⅛ inch or more than ⅝ inch between the approach rails and the weigh rails unless some special means is used to reduce impact when wheel loads pass from the approach rails to weighrails.

(cc) *Mitre joints.* For motion weighing scales, mitred joints shall be provided.

(dd) *Dead rails.* All scales except those located where they cannot be subjected to locomotive or other loads in excess of the sectional capacity, and excepting also scales of greater than 100 tons sectional capacity, shall be equipped with dead rails extending in one continuous piece across the scale and at the same elevation as the weighrails.

(ee) *Clearance.* The clearance between the bottom of any fixed beams, or deck supports, and the girder forming the weighbridge shall not be less than 2 inches.

(ff) *Location.* Scales shall be so located that an adequate foundation and at least 75 feet of tangent track at each approach to the weighrails can be provided.

(gg) *Approach walls static scales.* Approach walls or piers of concrete shall be built to extend at least 25 feet from the pit face of the end walls and back under the track to preserve line and surface of tracks. They may be built of a solid mass of concrete or may consist of parallel walls or piers; however, the latter construction shall have a single footing supporting both walls. Where necessary to obtain safe bearing capacity, the approach walls shall extend to the same depth as the pit walls.

(hh) *Footings or piers for load cells.* Concrete footings or piers supporting load-cell base plates shall not be less than 18 inches thick. Their tops shall be above the floor a sufficient distance to prevent the accumulation of water around or under the base plates.

(ii) *Footings or piers for lever stands.* Concrete footings or piers supporting the lever stands shall be not less than 18 inches thick. Their tops shall be above the floor a sufficient distance to prevent the accumulation of water under the base of the stand, and shall be finished to an exact level and elevation to receive the lever stands directly without the use of shims or grouting where possible. If the scale is of a type having main levers or parts of the bearing assemblies that hang below the bases of the main lever stands, the piers shall be provided with recesses of a size to give clearance of not less than 1.5 inches and shall be formed so as to prevent accumulation of dirt.

(jj) *Anchor bolts.* Anchor bolts embedded in concrete a minimum of 15 inches shall be provided in foundations for lever stands or load-cell base plates.

(kk) *Bearing pressures under foundations.* The bearing areas of the foundation footings shall be such that the pressure under the footings will not exceed:

For fine sand and clay—4,000 lb. per sq. ft.
For coarse sand and gravel or hard clay—6,000 lb. per sq. ft.
For boulders or solid rock—20,000 lb. per sq. ft.

If the soil does not have a bearing capacity of at least 4,000 pounds per sq. ft. and its bearing capacity cannot be increased by drainage, by stabilization, or by other means, pile foundations shall be provided. Careful soil exploration, including borings, is always desirable.

§ 802.13 Test standards and counterpoise weights.

(a) *Weight accuracy.* Counterpoise weights and field test standards (except in railroad track scale tests) shall be verified to within tolerances established by the National Bureau of Standards for Class "F" weights.

(b) *Railroad scale standards accuracy.* Test cars shall be calibrated within master track scale limits whenever possible. In an event, the test car error shall not exceed 16 pounds plus or minus.

(c) *Frequency of test weight certification.* (1) Counterpoise weights, test weights up to an including 50 lbs., and baskets used to hold test weights which are themselves calibrated as standards shall be reverified annually; closed baskets with casters fall into this category. Documentation indicating date or reverification by a qualified laboratory shall be supplied to the Service, on request.

(2) Large one-piece standards (block test weights) and closed baskets without casters which are stored in the facility in which they are used and meet the following criteria shall be reverified every 3 years:

(i) Standards shall be kept covered and stored in a reasonably clean and dry environment when not in use.

(ii) All movement of standards such as to and from storage and movement between scales shall be supervised by employees of the Service.

(iii) Standards shall show no evidence of abuse or damage and the sealing cavity shall be clearly stamped by a qualified laboratory with the year of reverification.

(iv) Documentation clearly indicating the date of last reverification shall be supplied to the Service. The 3-year interval will begin on the date indicated.

(3) Large one-piece standards used for testing official scales by approved testing agencies shall be reverified at least biennially. Documentation indicating reverification by a qualified laboratory shall be supplied to the Service on request.

(4) Standard test weight cars; i.e., railroad track scale test cars used in official testing of railroad track scales under the jurisdiction of the Service, shall be reverified at least annually. Documentation indicating date and location of last reverification shall be supplied to the Service on request.

(d) *Test standard size.* The stenciled weight of a test car shall be in 1,000-pound intervals. Test weight loads for vehicle and hopper scales used shall be sealed to a 50-pound interval.

(e) *Care of field standards.* Test standards shall be kept clean and protected in such a manner that they will not become chipped or damaged. They must be repainted as required by the Service. Plug and seals for adjusting cavities shall always remain intact.

(f) *Chains, hangers, and baskets.* Any chains or hangers used for suspending test weights on a large capacity scale may be balanced in part of the zero load and treated as a segment of the scale. Hangers for groups of test weights shall be treated as known standard weights and consequently maintained in a similar manner. Open baskets shall be sealed to a 50-pound multiple interval which shall be calibrated and treated as a normal standard. Closed baskets shall be sealed as an integral part of a standard summation. The closed basket shall be designed in such a manner to incorporate a fitted cover plate which shall be locked during calibration and the keys shall be placed in the local field office for security.

(g) *Qualified laboratories.* (1) All State laboratories currently approved by a National Bureau of Standards (NBS) ongoing certification program having auditing capability are automatically approved by the Service.

(2) Any county or city weights and measures jurisdiction approved by NBS or by their respective NBS-Certified State Laboratory as being equipped with appropriate traceable standards and trained staff to provide valid calibration is approved by the Service. The State approval may be documented by a certificate or letter. The jurisdiction must be equipped to provide suitable certification documentation.

(3) Any commercial industrial laboratory primarily involved in the business of sealing and calibrating test weights (standards) will be qualified provided:

(i) They request written authority to perform tolerance testing of weights used within the Service's program(s) through their approved State jurisdiction. Copies of their request and written reference regarding the State decision shall be provided to the Service. A positive decision by their State will be required as a prerequisite to the Service granting approval to any commercial laboratory to tolerance test the weights used in testing scales under the jurisdiction of the Service. Subsequent loss of NBS approval of their State will not necessarily invalidate the commercial laboratory approval;

(ii) They have NBS traceable standards (through the State) and trained staff to perform calibrations in a manner prescribed by NBS and/or the State;

(iii) They must be equipped to provide suitable certification documentation;

(iv) They must permit the Service to make on-the-site visits to laboratory testing space. Final approval of the commerical industrial laboratory will be contingent on the Service's judgment; and

(v) Once having obtained approval, the commercial industrial laboratory must maintain its site in a manner prescribed by the State and/or the Service.

[45 FR 15862, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980]

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

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810.651 Definition of triticale.
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810.656 Grades and grade requirements for triticale.
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810.708 Special grades and special grade requirements.
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INTERPRETATIONS

810.904 Interpretation with respect to the term "yellow kernels of corn with slight tinge of red."
810.905 Interpretation with respect to the term "white kernels of corn with a slight tinge of light straw or pink color."

AUTHORITY: 39 Stat. 482, as amended; Pub. L. 90-487, 82 Stat. 761; Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 *et seq.*), unless otherwise noted.

UNITED STATES STANDARDS FOR BARLEY [1]

SOURCE: Sections 810.201 through 810.211 appear at 40 FR 33428, Aug. 8, 1975, unless otherwise noted. Redesignated at 45 FR 15872, Mar. 11, 1980.

TERMS DEFINED

§ 810.201 Definition of barley.

Grain which, before the removal of dockage, consists of 50 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L. and *H. distichum* L.) and not more than 25 percent of other grains for which standards have been established under the United States Grain Standards Act. The term "barley" as used in these standards shall not include hullless barley.

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[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, and Drug, and Cosmetic Act, or other Federal laws.

§ 810.202 Definitions of other terms.

For the purposes of these standards the following terms shall have the meanings stated below:

(a) *Black barley.* Barley with black hulls.

(b) *Broken kernels.* Barley with more than ¼ of the kernel removed.

(c) *Classes.* Barley shall be divided into the following three classes: Six-rowed Barley, Two-rowed Barley, and Barley.

(1) *Six-rowed Barley.* Barley of the six-rowed type with white hulls which contains not more than 10.0 percent of two-rowed barley or black barley, either singly or combined. This class shall be divided into the following three subclasses:

(i) *Six-rowed Malting Barley.* Six-rowed barley of a suitable malting type which has 90.0 percent or more of kernels with white aleurone layers; which is not semisteely in mass; which is not badly stained or materially weathered, bleached, blighted, ergoty, garlicky, smutty, or weevily, and which otherwise meets the requirements of the grades for the subclass Six-rowed Malting Barley (see § 810.206).

(ii) *Six-rowed Blue Malting Barley.* Six-rowed barley of a suitable malting type which has 90.0 percent or more of kernels with blue aleurone layers; which is not semisteely in mass; which is not badly stained or materially weathered, bleached, blighted, ergoty, garlicky, smutty, or weevily; and which otherwise meets the requirements of the subclass Six-rowed Malting Barley (see § 810.206).

(iii) *Six-rowed Barley.* Any barley of the class Six-rowed Barley which does not meet the requirements of the subclass Six-rowed Malting Barley or Six-rowed Blue Malting Barley.

(2) *Two-rowed Barley.* Barley of the two-rowed type with white hulls which contain not more than 10.0 percent of six-rowed barley or black barley, either singly or combined. This class shall be divided into the following two subclasses:

(i) *Two-rowed Malting Barley.* Two-rowed barley of a suitable malting type, which is not semisteely in mass; which is not badly stained or materially weathered, bleached, blighted, ergoty, garlicky, smutty, or weevily, and which otherwise meets the requirements of the grades for the subclass Two-rowed Malting Barley (see § 810.207).

(ii) *Two-rowed Barley.* Two-rowed barley which does not meet the requirements of the subclass Two-rowed Malting Barley.

(3) *Barley.* Barley which does not meet the requirements for any of the classes Six-rowed Barley. Two-rowed Barley, or which contains more than 10 percent of black barley.

(d) *Damaged kernels.* Kernels and pieces of kernels of barley, other grains, and wild oats, which are: Blight-damaged, mold-damaged (major and minor), heat-damaged (major and minor), sprout-damaged or malted, frost-damaged (major and minor), germ-damaged, badly ground-damaged, badly weather-damaged, insect-bored, or otherwise materially damaged.

(e) *Distinctly low quality.* Barley which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards.

(f) *Dockage.* Weed seeds, weed stems, chaff, straw, grain other than barley, sand, dirt, and any material other than barley which can be removed readily from a test portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] Dockage shall include underdeveloped, shriveled, and small pieces of barley kernels removed in properly separating the material other than barley and which cannot be recovered by properly rescreening or recleaning. For the purpose of this paragraph

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[2] Grain Inspection Manual, GR Instruction 918-6, effective August 28, 1972, as amended, U.S. Department of Agriculture, Agricultural Marketing Service. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782.

"approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(g) *Foreign material.* All matter other than barley, other grains, and wild oats, which is not separated from the barley in the determination of dockage.

(h) *Frost-damaged kernels (major).* Kernels and pieces of kernels of barley which are badly shrunken and distinctly discolored black or brown by frost.

(i) *Frost-damaged kernels (minor).* Kernels and pieces of kernels of barley which are distinctly indented, immature or shrunken in appearance; or which are light green in color as a result of frost before maturity.

(j) *Germ-damaged kernels.* Kernels and pieces of kernels of barley that have dead germs or discolored germ ends indicative of dead germs.

(k) *Heat-damaged kernels (major).* Kernels and pieces of kernels of barley, other grains and wild oats, which are materially discolored and damaged by heat.

(l) *Heat-damaged kernels (minor).* Kernels and pieces of kernels of barley which are slightly discolored as a result of heating.

(m) *Mold-damaged kernels (major).* Kernels and pieces of kernels of barley which are weathered and contain considerable evidence of mold.

(n) *Mold-damaged kernels (minor).* Kernels and pieces of kernels of barley containing slight evidence of mold.

(o) *Moisture.* Water content in barley as determined by an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Motomco moisture meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(p) *Other grains.* Corn, cultivated buckwheat, einkorn, emmer, flaxseed, sorghum, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poular wheat, rice, rye, soybeans, spelt, sweet corn, sunflower, triticale, and wheat.

(q) *Plump barley.* Barley that remains on top of a ⁶⁄₆₄ × ¾ slotted-hole sieve after sieving in accordance with procedures prescribed in the Grain Inspection Manual.[2]

(r) *Sieves.* (1) *⁵⁄₆₄ × ¾ slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforations 0.0781 (⁵⁄₆₄) inch by 0.750 (¾) inch.

(2) *5 1/2/64 × ¾ slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforations 0.0859 (5 1/2/64) inch by 0.750 (¾) inch.

(3) *⁶⁄₆₄ × ¾ slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforations 0.0937 (⁶⁄₆₄) inch by 0.750 (¾) inch.

(s) *Skinned and broken kernels.* Barley kernels from which one-third or more of the hull has been removed, or in which the hull is loose or missing over the germ, or broken kernels, or whole kernels in which part or all of the germ is missing.

(t) *Sound barley.* Kernels and pieces of kernels of barley, except for frost-damaged kernels (minor) and mold-damaged kernels (minor), which are not damaged, as defined under paragraph (d) of this section.

(u) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(v) *Suitable malting type.* Varieties of malting barley which have been approved as being suitable for malting purposes. The approved varieties are listed in the Grain Inspection Manual, GR Instruction 918-6, which is available upon request from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(w) *Test weight per bushel.* (1) Test weight per bushel shall be the weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on a test portion of the original sample by an approved device in accordance with instructions in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

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[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782.

[2] See footnote 2 to § 810.202.

(2) Test weight per bushel shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 51.1 through 51.4 shall be 51.0 and 51.5 through 51.9 shall be 51.5.

(x) *Thin barley.* Barley and other matter which may be removed from a test portion of the dockage-free sample by an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall be the 5 1/2/64 × ¾ slotted-hole sieve for the class Two-rowed Barley and the 5/64 × ¾ slotted-hole sieve for the class Six-rowed Barley.

(y) *Wild brome grasses.* Seeds of brome grasses such as *Bromus rigidus* which have harsh awns and which are injurious when fed to livestock.

(z) *Wild oats.* Seeds of *Avena fatua* and *A. sterilis.*

(aa) *Whole kernels.* Barley with ¼ or less of the kernel removed.

[40 FR 33428, Aug. 8, 1975, as amended at 41 FR 22826, June 7, 1976. Redesignated at 45 FR 15872, Mar. 11, 1980]

PRINCIPLES GOVERNING THE APPLICATION OF THE STANDARDS

§ 810.203 Basis of determinations.

Each determination of dockage, moisture, temperature, garlic, live weevils or other insects injurious to stored grain, crotalaria seeds, large stones, castor beans, broken glass, animal filth, an unknown foreign substance, a commonly recognized harmful or toxic substance, and otherwise distinctly low quality shall be upon the basis of the grain as a whole. Each determination of heat-damaged kernels, white aleurone layers in Six-rowed Malting Barley; and blue aleurone layers in Six-rowed Blue Malting Barley shall be determined on a test portion of pearled, dockage-free barley. All other determinations shall be on a test portion of barley when free from dockage, except the determination of odor shall be upon either the basis of the grain as a whole or the grain when free from dockage.

[48 FR 44167, Sept. 28, 1983]

§ 810.204 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the barley standards are applicable to barley produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvesting of barley may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, Grain Division Field Offices, official inspection agencies, and interested parties in the grain trade will be notified promptly in writing of the modification. These modifications shall not include changes in interpretations of identity, class, quality, or condition.

§ 810.205 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., 0.46, report as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, round to the next lowest figure; e.g., 0.54, report as 0.5.

(3) When the figure to be rounded is even and it is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and it is followed by 5, round the figure to the next higher number; e.g., 0.45, report as 0.4; 0.55, report as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth of a percent, except for dockage, the identity of barley, classes, ergot, and for plump barley. The percentage of dockage, when equal to one percent or more, shall be stated as a whole percent; a fraction of a percent shall be disregarded. The percentage, when determining the identity of barley and the classes in the class "Barley," shall be stated to the nearest whole percent. The percentage of ergot shall be stated to the nearest hundredth percent. The percentage of plump barley shall be determined to the nearest whole percent and expressed in terms of the range in which it falls. Ranges shall be: Below 50 percent, 50 percent to 55 percent, 56 percent to 60 percent, 61 percent to 65 percent, 66 percent to 70 percent, 71 percent to 75 percent, 76 percent to 80 percent, 81 percent to 85 percent, 86 percent to 90 percent, 91 percent to 95 percent, and 96 percent to and including 100 percent.

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[2] [3] See footnotes 2 and 3 to § 810.202.

[40 FR 33428, Aug. 8, 1975, as amended at 41 FR 49473, Nov. 9, 1976. Redesignated at 45 FR 15872, Mar. 11, 1980]

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.206 Grades and grade requirements for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley.

(See also § 810.202(c)(1) (i) and (ii); § 810.210 (a) through (h); and § 810.211.)

Grade [1]	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting type (percent)	Sound barley (percent)	Damaged kernels [2] (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)	Black barley (percent)
U.S. No. 1	47.0	95.0	97.0	2.0	1.0	2.0	4.0	7.0	0.5
U.S. No. 2	45.0	95.0	94.0	3.0	2.0	3.0	6.0	10.0	1.0
U.S. No. 3	43.0	95.0	90.0	4.0	3.0	5.0	8.0	15.0	2.0

[1] Six-rowed Malting Barley and Six-rowed Blue Malting Barley may contain a maximum of 1.9 percent of frost damaged kernels of which not more than 0.4 percent may be frost-damaged (major), may contain a maximum of 0.2 percent of heat-damaged kernels of which not more than 0.1 percent may be heat-damaged kernels (major), and may contain unlimited amounts of mold-damaged kernels (minor); however, mold-damaged kernels (major) shall function as "damaged kernels" and against "sound barley."

[2] Frost-damaged kernels (minor) and mold-damaged kernels (minor) shall not be included as damaged kernels or scored against sound barley.

NOTE: Six-rowed barley that meets the requirements of U.S. No. 1 to U.S. No. 3, inclusive, for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley shall be classified and graded according to the requirements in this section. Otherwise, it shall be graded according to the requirements in § 810.208.

§ 810.207 Grades and grade requirements for the subclass Two-rowed Malting Barley.

(See also § 810.202(c)(2)(i); § 810.210 (a) through (h); and § 810.211.)

Grade [1]	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting type (percent)	Sound barley [2] (percent)	Wild oats (percent)	Foreign material (percent)	Skinned and broken kernels (percent)	Thin barley (percent)	Black barley (percent)
U.S. No. 1 choice	50.0	97.0	98.0	1.0	0.5	5.0	5.0	0.5
U.S. No. 1	48.0	97.0	98.0	1.0	0.5	7.0	7.0	0.5
U.S. No. 2	48.0	95.0	96.0	2.0	1.0	10.0	10.0	1.0
U.S. No. 3	48.0	95.0	93.0	3.0	2.0	10.0	10.0	2.0

[1] Two-rowed Malting Barley may contain a maximum of 1.9 percent of frost-damaged kernels of which not more than 0.4 percent may be frost-damaged kernels (major), may contain a maximum of 0.2 percent of heat-damaged kernels of which not more than 0.1 percent may be heat-damaged kernels (major), and may contain a maximum of 1.9 percent of mold-damaged kernels of which not more than 0.4 percent may be mold-damaged (major).

[2] Frost-damaged kernels (minor) and mold-damaged kernels (minor) shall not be scored against sound barley.

NOTE: Two-rowed barley that meets the requirements of U.S. No. 1 Choice to U.S. No. 3, inclusive, for the subclass Two-rowed Malting Barley shall be classified and graded according to the requirements in this section. Otherwise, it shall be graded according to the requirements in § 810.208.

§ 810.208 Grades and grade requirements for the subclasses Six-rowed Barley, Two-rowed Barley, and the class Barley.

(See also § 810.202(c) (1)(iii), (2)(ii); § 810.210 (a) through (h) and § 810.211.)

Grade	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Sound barley (percent)	Damaged kernels [1] (percent)	Heat-damaged kernels (major) (percent)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)	Black barley [2] (percent)
U.S. No. 1	47.0	97.0	2.0	0.2	1.0	4.0	10.0	0.5
U.S. No. 2	45.0	94.0	4.0	0.3	2.0	8.0	15.0	1.0
U.S. No. 3	43.0	90.0	6.0	0.5	3.0	12.0	25.0	2.0
U.S. No. 4 [3]	40.0	85.0	8.0	1.0	4.0	18.0	35.0	5.0
U.S. No. 5	36.0	75.0	10.0	3.0	5.0	28.0	75.0	10.0

U.S. Sample grade:

U.S. Sample grade shall be barley which—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5.

(b) Contains a quantity of smut so great that one or more of the grade requirements cannot be determined accurately,

(c) Contains more than 7 stones or more than 2 crotalaria seeds (*Crotalaria* spp.) per 1,000 grams of barley,

(d) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or

(e) Contains the seeds of wild brome grasses, or

(f) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels (major). Frost-damaged kernels (minor) and mold-damaged kernels (minor) shall not be considered as damaged kernels.

[2] These limits do not apply to the class Barley.

[3] Barley that is badly stained or materially weathered shall be graded not higher than U.S. No. 4.

§ 810.209 Grade designations.

(a) *Grade designations for barley.* The grade designation for barley shall include, in the following order:

(1) The letters "U.S.";

(2) The number of the grade or the words "Sample grade";

(3) The special grade "Bright," if applicable (see § 810.211);

(4) The name of the applicable subclass, or in the case of the class barley, the name of the class;

(5) The name of each applicable special grade (see § 810.211);

(6) When applicable, the word "dockage" together with the percentage thereof; and

(7) For malting barley, the words "Plump Barley" together with the applicable percentage range. If requested by the applicant, the grade designation for the class Barley shall include, following the word "Barley," the approximate percentage of each class and of black barley in the mixture in order of predominance.

(b) *Optional grade designations.* Barley may be certificated (under certain conditions,[4] when supported by offical analysis, as "U.S. No. 2 or better Barley," "U.S. No. 3 or better Barley," etc. The optional grade designation for barley shall include the name of the applicable class or subclass immediately preceding the word "barley" in the grade designation. The special grade designations and dockage, when applicable, also shall be included (under certain conditions[4]) in the certification.

[42 FR 30146, June 13, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.210 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.206, § 810.207, or § 810.208. Such special grades are established and determined as follows:

(a) *Bleached barley.* Barley which, in whole or in part, has been treated with sulphurous acid or any other bleaching agent.

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[4] The conditions are listed in the Grain Inspection Manual, GR Instruction 918-6. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(b) *Blighted barley.* Barley which contains more than 4.0 percent of blight-damaged and/or mold-damaged kernels (major).

(c) *Bright barley.* Barley, except bleached barley, that is of exceptionally good natural color.

(d) *Ergoty barley.* Barley which contains ergot in excess of 0.10 percent.

(e) *Garlicky barley.* Barley which contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 500 grams of barley.

(f) *Smutty barley.* Barley which has kernels covered with smut spores to give a smutty appearance in mass, or which contains 0.20 percent or more of smut masses.

(g) *Stained barley.* Barley, except bleached barley that is badly stained or weathered.

(h) *Tough barley.* Barley which contains more than 14.5 percent moisture.

(i) *Weevily barley.* Barley which is infested with live weevils or other insects injurious to stored grain. As applied to barley the meaning of the term "infested" is set forth in chapter V of the Grain Inspection Manual.[2]

§ 810.211 Special grade designations.

The grade designation for bright barley shall include, preceding the class or subclass, the word "Bright." The grade designation for bleached, blighted, ergoty, garlicky, smutty, tough, or weevily barley shall include, following the class or subclass, the word(s) "Bleached," "Blighted," "Ergoty," "Garlicky," "Smutty," "Stained," "Tough," or "Weevily," as warranted, and all other information prescribed in § 810.209.

UNITED STATES STANDARDS FOR OATS [1]

SOURCE: Sections 810.251 through 810.259 appear at 39 FR 32125, Sept. 5, 1974, unless otherwise noted. Redesignated at 45 FR 15872, Mar. 11, 1980.

TERMS DEFINED

§ 810.251 Definition of oats.

Grain which consists of 50 percent or more of oats (*Avena sativa* L. and *A. byzantina* C. Koch) and may contain, singly or in combination, not more than 25 percent of wild oats and other grains for which standards have been established under the United States Grain Standards Act.

§ 810.252 Definitions of other terms.

For the purposes of these standards the following terms shall have the meanings stated below:

(a) *Distinctly low quality.* Oats which are obviously of inferior quality because they contain foreign substances or because they are in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards.

(b) *Fine seeds.* All matter which may be removed from a test portion of the original sample by an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph, "approved device" shall be the $\frac{5}{64}$ triangular-hole sieve.[3]

(c) *Foreign material.* All matter other than oats, wild oats, and other grains (see paragraph (f) of this section). Oat clippings and detached oat hulls are foreign material.

(d) *Heat-damaged kernels.* Kernels and pieces of kernels of oats, other grains (see paragraph (f) of this section), and wild oats which are materially discolored and damaged as a result of heating.

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[2] See footnote 2 to § 810.202.

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] Grain Inspection Manual, GR Instruction 918-6, effective August 28, 1972, as amended, U.S. Department of Agriculture, Agricultural Marketing Service. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782.

(e) *Moisture.* Water content in oats as determined by an approved device in accordance with procedures prescribed in The Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, and wheat.

(g) *Sieves.* (1) *5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.

(2) *0.064 × 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

(h) *Sound oats.* Kernels and pieces of kernels of oats (except wild oats) which are not badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(i) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(j) *Test weight per bushel.* Test weight per bushel shall be the weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on a test portion of the original sample by an approved device in accordance with instructions in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]
Test weight per bushel, for grade determination, shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 41.1 through 41.4 shall be 41.0 and 41.5 through 41.9 shall be 41.5.

(k) *Wild oats.* Seeds of *Avena fatua* and *A. sterilis.*

EFFECTIVE DATE NOTE: At 49 FR 49430, Dec. 20, 1984, § 810.252 was revised, effective April 14, 1986. The text currently in effect is shown above. The text effective April 14, 1986, appears as follows:

§ 810.252 Definitions of other terms.

For the purposes of these standards the following terms shall have the meanings stated below:

(a) *Distinctly low quality.* Oats which are of obviously inferior quality because they contain foreign substances or because they are in an unusual state or condition, and which cannot be graded properly using the other grading factors provided in the standards. Distinctly low quality shall include oats which contain any objects too large to enter the sampling device, i.e., large stones, wreckage, or similar objects.

(b) *Fine seeds.* All matter which may be removed from a test portion of the original sample by an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall be the 5/64 inch triangular-hole sieve.[3]

(c) *Foreign material.* All matter other than oats, wild oats, and other grains (see paragraph (f) of this section). Oat clippings and detached oat hulls and pieces of detached hulls are foreign material.

(d) *Heat-damaged kernels.* Kernels and pieces of kernels of oats, other grains (see paragraph (f) of this section), and wild oats which are materially discolored and damaged as a result of heating.

(e) *Moisture.* Water content in oats as determined by an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph "approved device" shall include the Motomco Moisture Meter and any other equip-

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[2, 3] See footnotes 2 and 3 to § 810.252.

ment that is approved by the Administrator as giving equivalent results.[3]

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, and wheat.

(g) *Sieves.* (1) *$\frac{5}{64}$ inch triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 ($\frac{5}{64}$) inch in diameter.

(2) *0.064 x $\frac{3}{8}$ inch oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 ($\frac{3}{8}$) inch.

(h) *Sound oats.* Kernels and pieces of kernels of oats (except wild oats) which are not badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(i) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(j) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on a test portion of the original sample by an approved device following instructions in the Grain Inspection Handbook.[2] For the purpose of this paragraph "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3] Test weight per bushel, for grade determination, shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 41.0 through 41.4 shall be 41.0 and 41.5 through 41.9 shall be 41.5.

(k) *Wild oats.* Seeds of *Avena fatua* and *A. sterilis.*

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884, (7 U.S.C. 76, 87(e)))

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 810.253 Basis of determination.

All determinations shall be on a test portion of the original sample.

EFFECTIVE DATE NOTE: At 49 FR 49430, Dec. 20, 1984, § 810.253 was revised, effective April 14, 1986. The text currently in effect is shown above. The text effective April 14, 1986, appears as follows:

810.253 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *All other determinations.* All other determinations shall be upon the basis of the sample as a whole.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

§ 810.254 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the oats standards are applicable to oats produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvesting of oats may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary; Grain Division Field Offices, official inspection agencies, and interested parties in the grain industry will be notified promptly in writing of the modification. Changes in interpretations of identity, quality, and condition are excluded and shall not be made.

EFFECTIVE DATE NOTE: At 49431, Dec. 20, 1984, § 810.254 was revised, effective April 14, 1986. The text currently in effect is

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Footnotes:

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

shown above. The text effective April 14, 1986, appears as follows:

§ 810.254 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the oats standards are applicable to oats produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of oats may require temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

§ 810.255 Percentages.

Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(a) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., 0.46, report as 0.5.

(b) When the figure to be rounded is followed by a figure less than 5, round to the next lowest figure; e.g., 0.54, report as 0.5.

(c) When the figure to be rounded is even and it is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and it is followed by 5, round the figure to the next highest number; e.g., 0.45, report as 0.4; 0.55, report as 0.6.

Percentages, except when determining the quantity of ergot and the identity of oats, shall be stated in whole and tenth percent to the nearest tenth percent, unless otherwise prescribed in the Grain Inspection Manual.[2] The percentage of ergot shall be stated to the nearest hundredth percent. The percentage of oats, wild oats, and other grains in determining the identity of oats shall be stated to the nearest whole percent.

[39 FR 32125, Sept. 5, 1974; 39 FR 33305, Sept. 17, 1974. Redesignated at 45 FR 15872, Mar. 11, 1980]

Effective Date Note: At 49 FR 49431, Dec. 20, 1984, § 810.255 was revised, effective April 14, 1986. The text currently in effect is shown above. The text effective April 14, 1986, appears as follows:

§ 810.255 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure, e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages, except when determining the quantity of ergot and the identity of oats, shall be stated in whole and tenth percent to the nearest tenth percent, unless otherwise prescribed in the Grain Inspection Handbook.[2] The percentage of ergot shall be stated to the nearest hundredth percent. The percentage of oats, wild oats, and other grains in determining the identity of oats shall be stated to the nearest whole percent.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

Footnotes:

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.256 Grades and grade requirements for oats.

(See also § 810.258.)

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[2] See footnote 2 to § 810.252.

Grade	Minimum limits		Maximum limits		
	Test weight per bushel (pounds)	Sound oats (percent)	Heat-damaged kernels (percent)	Foreign minerals (percent)	Wild oats (percent)
U.S. No. 1	36.0	97.0	0.1	2.0	2.0
U.S. No. 2	33.0	94.0	.3	3.0	3.0
U.S. No. 3 [1]	30.0	90.0	1.0	4.0	5.0
U.S. No. 4 [2]	27.0	80.0	3.0	5.0	10.0

U.S. sample grade:

U.S. Sample grade shall be oats which—

(a) Do not meet the requirements for the grades U.S. No. 1, 2, 3, or 4,

(b) Contain more than 7 stones which have an aggregate weight in excess of 0.2 percent of the sample weight or more than 2 crotalaria seeds (*Crotalaria* spp.) per 1,000 grams of oats or more than 16 percent of moisture,

(c) Have a musty, sour, or commercially objectionable foreign ordor (except smut or garlic odor), or

(d) Are heating or otherwise of distinctly low quality.

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[1] Oats that are slightly weathered shall be graded not higher than U.S. No. 3.

[2] Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

[39 FR 32125, Sept. 5, 1974; 39 FR 33305, Sept. 17, 1974. Redesignated at 45 FR 15872, Mar. 11, 1980]

EFFECTIVE DATE NOTE: At 49 FR 49431, Dec. 20, 1984, § 810.256 was revised, effective April 14, 1986. The text currently in effect is shown above. The text effective April 14, 1986, appears as follows. Paragraph (b) of § 810.256 was corrected at 50 FR 1039, Jan. 9, 1985.

§ 810.256 Grades and grade requirements for oats.

(See also § 810.258.)

Grade	Minimum limits—		Maximum limits—		
	Test weight per bushel (pounds)	Sound oats (percent)	Heat-damaged kernels (percent)	Foreign material (percent)	Wild oats (percent)
U.S. No. 1	36.0	97.0	0.1	2.0	2.0
U.S. No. 2	33.0	94.0	0.3	3.0	3.0
U.S. No. 3 [1]	30.0	90.0	1.0	4.0	5.0
U.S. No. 4 [2]	27.0	80.0	3.0	5.0	10.0

U.S. sample grade—U.S. sample grade shall be oats which—

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contain 8 or more stones which have a aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of broken glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more pieces of an unknown foreign substance(s) or a commonly recognized harmful or toxic foreign substance(s), 8 or more cocklebur or similar seeds singly or in combination, or 10 or more pieces of rodent pellets, bird droppings, or an equivalent quantity of other animal filth in 1⅛ to 1¼ quarts cut from the representative sample; or

(c) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or

(d) Are heating or otherwise of distinctly low quality.

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[1] Oats that are slightly weathered shall be graded not higher than U.S. No. 3.

[2] Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

§ 810.257 Grade designations.

(a) *Grade designations for oats.* The grade designations for oats shall include, in the following order: (1) The letters "U.S.," (2) the number of the grade or the words "Sample grade," (3) certain special grade designations, if applicable (see § 810.259), (4) the word "oats," and (5) certain special grade designations, if applicable (see § 810.259).

(b) *Optional grade designations.* Oats may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Oats," "U.S. No. 3 or better Oats," etc. The special grade designations, when applicable, also shall be included (under certain conditions [4]) in the certification.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

[42 FR 30146, June 13, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980]

EFFECTIVE DATE NOTE: At 49 FR 49431, Dec. 20, 1984, § 810.257 footnote 4 was revised, effective April 14, 1986. The footnote currently in effect is shown immediately following § 810.257. The footnote effective April 14, 1986, appears as follows:

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[4] The conditions are listed in the Grain Inspection Manual, GR Instruction 918-6. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

§ 810.257 Grade designations.

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(b) * * * [4]

Footnote:

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.258 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.256. Such special grades are established and determined as follows:

(a) *Bleached oats.* Oats which in whole or in part, have been treated with sulphurous acid or any other bleaching agent.

(b) *Bright oats.* Oats, except Bleached oats, that are of good natural color.

(c) *Ergoty oats.* Oats which contain ergot in excess of 0.10 percent.

(d) *Extra-heavy oats.* Oats which have a test weight per bushel of 40 pounds or more.

(e) *Garlicky oats.* Oats which contain 4 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in 500 grams of oats.

(f) *Heavy oats.* Oats which have a test weight per bushel of 38 pounds or more but less than 40 pounds.

(g) *Smutty oats.* Oats which have kernels covered with smut spores or which contain smut masses and smut balls in excess of 0.2 percent.

(h) *Thin oats.* Oats which contain more than 20.0 percent of oats and other matter, except "fine seeds," which may be removed from a test portion of the original sample by approved devices in accordance with the procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved devices" shall be the 0.064 × $\frac{3}{8}$ oblong-hole sieve and the $\frac{5}{64}$ triangular-hole sieve.[3]

(i) *Tough oats.* Oats which contain more than 14.0 percent but not more than 16.0 percent of moisture.

(j) *Weevily oats.* Oats which are infested with live weevils or other insects injurious to stored grain. As applied to oats, the meaning of the term "infested" is set forth in Chapter VI of the Grain Inspection Manual.[2]

Effective Date Note: At 49 FR 49431, Dec. 20, 1984, § 810.258 was amended by revising paragraphs (h) and (i), effective April 14, 1986. The text currently in effect is shown above. The text effective April 14, 1986, appears as follows:

§ 810.258 Special grades and special grade requirements.

* * * * *

(h) *Thin oats.* Oats which contain more than 20.0 percent of oats and other matter, except "fine seeds," which may be removed from a test portion of the original sample by approved devices following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph "approved devices" shall be the 0.064 x $\frac{3}{8}$ inch oblong-hole sieve and the $\frac{5}{64}$ inch triangular-hole sieve.[3]

(i) *Weevily oats.* Oats which are infested with live weevils or other insects injurious to stored grain as set forth in the Grain Inspection Handbook.[2]

* * * * *

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

Footnotes:

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

§ 810.259 Special grade designations.

(See also § 810.258.)

[2, 3] See footnotes 2 and 3 to § 810.252.

The grade designation for bright, extra-heavy, and heavy oats shall include, preceding the word "oats," the word(s) "Bright," "Extra-heavy," or "Heavy," as warranted, and all other information prescribed in § 810.257. The grade designation for bleached, ergoty, garlicky, smutty, thin, tough, and weevily oats shall include, following the word "oats," the word(s) "Bleached," "Ergoty," "Garlicky," "Smutty," "Thin," "Tough," or "Weevily," as warranted, and all other information prescribed in § 810.257.

UNITED STATES STANDARDS FOR WHEAT [1]

SOURCE: Sections 810.301 through 810.309 appear at 41 FR 26672, June 29, 1976, unless otherwise noted. Redesignated at 45 FR 15872, Mar. 11, 1980.

TERMS DEFINED

§ 810.301 Definition of wheat.

The grain of common wheat (*Triticumaestivum L.*), club wheat (*T. compactum* Host), and durum wheat (*T. durum* Desf.) which, before the removal of the dockage, consists of 50 percent or more of one or more of these wheats and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats. Wheat shall be divided into the following seven classes: Hard Red Spring Wheat, Durum Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, Unclassed Wheat, and Mixed Wheat.

(a) *Hard Red Spring Wheat.* All varieties of hard red spring wheat. This class shall be divided into the following three subclasses:

(1) *Dark Northern Spring Wheat.* Hard red spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(2) *Northern Spring Wheat.* Hard red spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(3) *Red Spring Wheat.* Hard red spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(b) *Durum Wheat.* All varieties of white (amber) durum wheat. This class shall be divided into the following three subclasses:

(1) *Hard Amber Durum Wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(2) *Amber Durum Wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(3) *Durum Wheat.* Durum wheat with less than 60 percent of hard and vitreous kernels of amber color.

(c) *Hard Red Winter Wheat.* All varieties of hard red winter wheat. There are no subclasses in this class.

(d) *Soft Red Winter Wheat.* All varieties of soft red winter wheat. There are no subclasses in this class.

(e) *White Wheat.* All varieties of white wheat. This class shall be divided into the following four subclasses:

(1) *Hard White Wheat.* White wheat with 75 percent or more of hard kernels. It may contain not more than 10 percent of white club wheat.

(2) *Soft White Wheat.* White wheat with less than 75 percent of hard kernels. It may contain not more than 10 percent of white club wheat.

(3) *White Club Wheat.* White club wheat containing not more than 10 percent of other white wheat.

(4) *Western White Wheat.* White wheat containing more than 10 percent of white club wheat and more than 10 percent of other white wheat.

(f) *Unclassed Wheat.* Any variety of wheat which is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class shall include:

(1) Red Durum wheat.

(2) Any wheat which is other than red or white in color.

(g) *Mixed Wheat.* Any mixture of wheat which consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes which meets the definition of wheat.

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[1] Compliance with the provisions of these standards does not excuse failure to comply with the provision of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

§ 810.302 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) Contrasting classes shall be:

(1) Durum Wheat, White Wheat, and Unclassed Wheat in the classes Hard Red Spring Wheat and Hard Red Winter Wheat.

(2) Hard Red Spring Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, and Unclassed Wheat in the class Durum Wheat.

(3) Durum Wheat and Unclassed Wheat in the class Soft Red Winter Wheat.

(4) Hard Red Spring Wheat, Durum Wheat, Hard Red Winter Wheat, and Unclassed Wheat in the class White Wheat.

(b) *Damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged, in the sample after the removal of dockage and shrunken and broken kernels.

(c) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor "Defects (total)" for each numerical grade.

(d) *Distinctly low quality.* Wheat which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device; i.e., large stones, wreckage, etc.

(e) *Dockage.* All matter other than wheat which can be removed readily from a test portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] Also, underdeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the material other than wheat and which cannot be recovered by properly rescreening or recleaning. (See also § 810.305 and § 810.307.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Foreign material.* All matter other than wheat which remains in the sample after the removal of dockage and shrunken and broken kernels.

(g) *Heat-damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(h) *Moisture.* Water content in wheat as determined by an approved device in accordance with procedures prescribed in the Equipment Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(i) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, and wild oats.

(j) *Shrunken and broken kernels.* All matter which can be removed from a test portion of the dockage-free sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall be the 0.064 x ⅜ oblong-hole sieve.[3]

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[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(k) *Sieve. 0.064 × ⅜ oblong-hole.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (⅜) inch.

(l) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(m) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage free test portion of the original sample using an approved device in accordance with instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[41 FR 26672, June 29, 1976. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 49 FR 20639, May 16, 1984]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 810.303 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, temperature, an unknown foreign substance, and a commonly recognized harmful or toxic substance shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage except the determination of heat-damaged kernels, damaged kernels (total), foreign material, other classes, contrasting classes, and subclasses shall be upon the basis of the grain when free from dockage and shrunken and broken kernels; and the determination of odor shall be upon either the basis of the sample as a whole or the grain when free from dockage.

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[41 FR 26672, June 29, 1976, as amended at 42 FR 9379, Feb. 16, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 48 FR 44167, Sept. 28, 1983; 49 FR 20640, May 16, 1984]

§ 810.304 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the wheat standards are applicable to wheat produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of wheat may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, Grain Division Field Offices, official inspection agencies, and interested parties in the grain trade will be notified promptly in writing of the modification. Adjustments in interpretations (i.e., identity, class, quality, and condition) are excluded and shall not be made.

§ 810.305 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the

figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of wheat, the class, the subclass, and the percentage of dockage and/or ergot. The percentage when determining the identity of wheat, the class, and the subclass shall be stated to the nearest whole percent. The percentage of dockage when equal to one-half percent or more shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, with other fractions disregarded as shown in the following examples: Dockage ranging from 0.5 to 0.9 percent shall be expressed as 0.5 percent, from 1.0 to 1.4 percent as 1.0 percent, from 1.5 percent to 1.9 percent as 1.5 percent, etc. The percentage of ergot shall be stated to the nearest hundredth percent.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.306 Grades and grade requirements.

WHEAT

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat. (See also § 810.308.)

	Minimum limits of—		Maximum limits of—						
	Test Weight per bushel							Wheat of other classes [4]	
	Hard Red Spring wheat or White Club wheat (pounds [1])	All other classes and subclasses (pounds)	Heat damaged kernels (percent)	Damaged kernels (total) [2] (percent)	Foreign material (percent)	Shrunken and broken kernels (percent)	Defects (Total) [3] (percent)	Contrasting classes (percent)	Wheat of other classes [5] (percent)
U.S. No. 1	58.0	60.0	0.2	2.0	0.5	3.0	3.0	1.0	3.0
U.S. No. 2	57.0	58.0	0.2	4.0	1.0	5.0	5.0	2.0	5.0
U.S. No. 3	55.0	56.0	0.5	7.0	2.0	8.0	8.0	3.0	10.0
U.S. No. 4	53.0	54.0	1.0	10.0	3.0	12.0	12.0	10.0	10.0
U.S. No. 5	50.0	51.0	3.0	15.0	5.0	20.0	20.0	10.0	10.0

U.S. Sample grade

U.S. Sample grade shall be wheat which:

(1) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(2) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria spp.*), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, an equivalent quantity of other animal filth per 1,000 grams of wheat; or

(3) Has a musty, sour, or commercially objectionable foreign odor (*except smut or garlic odor*); or

(4) Is heating or otherwise of distinctly low quality.

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[1] These requirements also apply when Hard Red Spring wheat or White Club wheat predominate in a sample of Mixed wheat.

[2] Includes heat-damaged kernels.

[3] Defects (total) include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects

[4] Unclassed Wheat of any grade may contain not more than 10 percent of wheat of other classes.

[5] Includes contrasting classes.

(b) *Grades and grade requirements for Mixed Wheat.* (See also § 810.308.) Mixed Wheat shall be graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat which predominates in the mixture, except that the factor "wheat of other classes" shall be disregarded.

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[41 FR 26673, June 29, 1976; 41 FR 27969, July 8, 1976. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 49 FR 20640, May 16, 1984]

§ 810.307 Grade designations.

(a) *Grade designations for wheat.* (See also § 810.308). The grade designations for wheat shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the subclass, or in the case of Hard Red Winter wheat, Mixed wheat, Soft Red Winter wheat, and Unclassed wheat, the class; (4) each applicable special grade (see also § 810.309); and (5) when applicable, the word "dockage" together with the percentage thereof. In the case of Western White wheat, there shall be included under "Remarks" on the inspection certificate, in the order of predominance, the name and percentage of White Club wheat and other white wheat in the mixture. In the case of Unclassed wheat, there shall be included under "Remarks" on the inspection certificate the color or other characteristics which describe the wheat, together with the percentage. In the case of Mixed wheat, there shall be included under "Remarks" on the inspection certificate, in order of predominance, the name and percentage of the classes that comprise the mixture.

(b) *Optional grade designations.* Wheat may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Wheat," "U.S. No. 3 or better Wheat," etc. The optional grade designations for wheat shall include the name of the applicable class or subclass immediately preceding the word "wheat" in the grade designation. The special grade designations and dockage, when applicable, also shall be included (under certain conditions [4]) in the certification.

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[42 FR 30146, June 13, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980, as amended at 49 FR 20640, May 16, 1984]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.308 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.306. Such special grades are established and determined as follows:

(a) *Ergoty wheat.* Wheat which contains more than 0.30 percent of ergot.

(b) *Garlicky wheat.* Wheat which contains in a 1,000-grain portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Light smutty wheat.* Wheat which has an unmistakable odor of smut, or which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(d) *Smutty wheat.* Wheat which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(e) *Weevily wheat.* Wheat which is infested with live weevils or other insects injurious to stored grain. As applied to wheat, the meaning of the term "infested" is set forth in the Grain Inspection Handbook.[2]

(f) *Treated wheat.* Wheat which has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the U.S. numerical grade or the U.S. Sample grade designation alone.

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[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

[2] See footnote 2 to § 810.302.

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[41 FR 26672, June 29, 1976. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 49 FR 20640, May 16, 1984]

§ 810.309 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.307.

(a) The grade designation for ergoty, garlicky, light smutty, smutty, and weevily wheat shall include in the order listed, following the applicable class or subclass, the word(s) "Ergoty": "Garlicky": "Light Smutty": "Smutty": and "Weevily": as warranted, and all other information prescribed in § 810.307.

(b) The grade designation for treated wheat shall include, following the applicable class or subclass and any of the above applicable special grade designations, the word "Treated," followed by a statement indicating the kind of treatment (e.g., scoured, limed, washed, sulfured, etc.).

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[41 FR 26672, June 29, 1976. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 49 FR 20640, May 16, 1984]

UNITED STATES STANDARDS FOR CORN

§ 810.351 Terms defined.

For the purposes of the United States Standards for Corn (Maize):

(a) *Corn.* Corn shall be any grain which consists of 50 percent or more of whole kernels of shelled dent corn and/or shelled flint corn (Zea mays) and may contain not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

(b) *Classes.* Corn shall be divided into the following three classes: Yellow corn, white corn, and mixed corn.

(c) *Yellow corn.* The class yellow corn shall be yellow-kerneled corn and may contain not more than 5.0 percent of corn of other colors. Yellow kernels of corn with a slight tinge of red shall be considered as yellow corn.

(d) *White corn.* The class white corn shall be white-kerneled corn and may contain not more than 2.0 percent of corn of other colors. White kernels of corn with a slight tinge of light straw or pink color shall be considered as white corn.

(e) *Mixed corn.* The class mixed corn shall be corn which does not meet the color requirements for either of the classes yellow corn or white corn and shall include white-capped yellow corn.

(f) *Grades.* Grades shall be the U.S. numerical grades, U.S. Sample grade, and special grades provided for in § 810.353.

(g) *Broken corn and foreign material.* Broken corn and foreign material shall be kernels and pieces of kernels of corn and all matter other than corn which will pass readily through a $\frac{12}{64}$ sieve, and all matter other than corn which remains in the sieved sample.

(h) *Damaged kernels.* Damaged kernels shall be kernels and pieces of kernels of corn which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, moldy, diseased, or otherwise materially damaged.

(i) *Heat-damaged kernels.* Heat-damaged kernels shall be kernels and pieces of kernels of corn which have been materially discolored and damaged by heat.

(j) *$\frac{12}{64}$ sieve.* A $\frac{12}{64}$ sieve shall be an aluminum sieve 0.0319 inch thick perforated with round holes 0.1875 ($\frac{12}{64}$) inch in diameter which are $\frac{1}{4}$ inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

(k) *Stones.* Stones shall be concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(l) *Distinctly low quality.* Corn which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device; i.e., large stones, wreckage, etc.

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[24 FR 467, Jan. 21, 1959. Redesignated and amended at 34 FR 3593, Feb. 28, 1969; 39 FR 1351, Jan. 8, 1974. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 49 FR 35340, Sept. 7, 1984]

§ 810.352 Principles governing the application of the standards.

The following principles shall apply in the determination of the classes and grades of corn:

(a) *Basis of determinations.* Each determination of class, damaged kernels, heat-damaged kernels, flint corn, and flint and dent corn shall be upon the basis of the grain after the removal of the broken corn and foreign material. All other determinations shall be upon the basis of the grain as a whole, except the determination of odor shall be upon either the basis of the grain as a whole or the grain after removal of the broken corn and foreign material.

(b) *Percentages.* All percentages shall be determined upon the basis of weight.

(c) *Moisture.* Moisture shall be ascertained by the air-oven method for corn prescribed by the United States Department of Agriculture as described in Service and Regulatory Announcements No. 147 (1959 Revision) of the Agricultural Marketing Service, or ascertained by any method which gives equivalent results.

(d) *Test weight per bushel.* Test weight per bushel shall be the weight per Winchester bushel as determined by the method prescribed by the United States Department of Agriculture as described in Circular No. 921, issued June 1953, or as determined by any method which gives equivalent results.

[24 FR 467, Jan. 21, 1959. Redesignated at 34 FR 3593, Feb. 28, 1969, and further redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 48 FR 44167, Sept. 28, 1983]

§ 810.353 Grades, grade requirements, and grade designations.

The following grades, grade requirements, and grade designations are applicable under these standards:

(a) *Grades and grade requirements for corn.* (See also paragraph (d) of this section.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of —		
		Broken corn and foreign material (percent)	Damaged kernels	
			Total (percent)	Heat damaged kernels (percent)
U.S. No. 1	56.0	2.0	3.0	0.1
U.S. No. 2	54.0	3.0	5.0	0.2
U.S. No. 3	52.0	4.0	7.0	0.5
U.S. No. 4	49.0	5.0	10.0	1.0
U.S. No. 5	46.0	7.0	15.0	3.0
U.S. Sample grade:				

U.S. Sample grade shall be corn which—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) In a 1,000 gram sample, contains 8 or more stones which have an aggregated weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 8 or more cockleburs, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), or animal filth in excess of 0.20 percent; or

(c) Has a musty, sour, or commercially objectionable foreign odor; or

(d) Is heating or otherwise of distinctly low quality.

(b) *Grade designations for corn.* The grade designations for corn shall include, in the order named, the letters "U.S."; the number of the grade or the words "Sample grade," as the case may be; the name of the applicable class; and the name of each applicable special grade.

(c) *Optional grade designations.* Corn may be certificated (under certain conditions[4]), when supported by official analysis, as "U.S. No. 2 or better Corn," "U.S. No. 3 or better

Corn," etc. The optional grade designations for corn shall include the name of the applicable class immediately preceding the word "corn" in the grade designation. The special grade designations, when applicable, also shall be included (under certain conditions[4]) in the certification.

(d) *Special grades, special grade requirements and special grade designations for corn*—(1) *Flint corn*—(i) *Requirements.* Flint corn shall be corn of any class which consists of 95 percent or more of flint corn.

(ii) *Grade designation.* Flint corn shall be graded and designated according to the grade requirements of the standards applicable to such corn if it were not flint, and there shall be added to and made a part of the grade designation, immediately following the class name, the word "flint."

(2) *Flint and dent corn*—(i) *Requirements.* Flint and dent corn shall be corn of any class which consists of a mixture of flint and dent corn containing more than 5.0 percent but less than 95 percent of flint corn.

(ii) *Grade designation.* Flint and dent corn shall be graded and designated according to the grade requirements of the standards applicable to such corn if it were not flint and dent, and there shall be added to and made a part of the grade designation, immediately following the class name, the words "flint and dent" and the approximate percentage of flint corn.

(3) *Weevily corn*—(i) *Requirements.* Weevily corn shall be corn which is infested with live weevils or other insects injurious to stored grain.

(ii) *Grade designation.* Weevily corn shall be graded and designated according to the grade requirements of the standards applicable to such corn if it were not weevily, and there shall be added to and made a part of the grade designation the word "weevily."

(4) *Waxy corn*—(i) *Requirement.* Waxy corn shall be corn of any class which consists of 95 percent or more waxy corn, as determined by a test approved by the Administrator.

(ii) *Grade Designations.* Waxy corn shall be graded and designated according to the grade requirements of the standards applicable to such corn if it were not waxy, and there shall be added to and made a part of the grade designation immediately following the word "corn," the word "waxy."

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)))

[24 FR 467, Jan. 21, 1959. Redesignated and amended at 34 FR 3593, Feb. 28, 1969; 42 FR 30146, June 13, 1977; 43 FR 2816, Jan. 20, 1978; 44 FR 6083, Jan. 31, 1979. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 49 FR 35340, Sept. 7, 1984; 49 FR 35744, Sept. 12, 1984; 50 FR 1039, Jan. 9, 1985]

UNITED STATES STANDARDS FOR RYE[1]

AUTHORITY: Sections 810.401 through 810.409 were issued under secs. 5 and 18, Pub. L. 94-582, 90 Stat 2869, and 2884 (7 U.S.C. 76 and 87(e)).

SOURCE: Sections 810.401 through 810.409 appear at 49 FR 22060, May 25, 1984, unless otherwise noted.

TERMS DEFINED

§ 810.401 Definition of rye.

The grain of common rye (*Secale cereale* L.) which, before the removal of dockage, consists of 50 percent or more of rye and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole kernels of rye.

§ 810.402 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below.

(a) *Damaged kernels.* Kernels, pieces of rye kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged which remain in the sample after the removal of dockage.

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[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

(b) *Distinctly low quality.* Rye which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include the presence of any objects too large to enter the sampling devices; i.e., large stones, wreckage, etc.

(c) *Dockage.* All matter other than rye which can be readily removed from a portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] Also, underdeveloped, shriveled, and small pieces of rye kernels removed in separating the material other than rye and which cannot be recovered by properly rescreening or recleaning. (See also § 810.405 and § 810.407.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(d) *Foreign material.* All matter other than rye which remains in the sample after the removal of dockage.

(e) *Heat-damaged kernels.* Kernels, pieces of rye kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage.

(f) *Moisture.* Water content in rye as determined by an approved device in accordance with procedures prescribed in the Grain Inspection Handbook[2] and Equipment Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Mositure Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(g) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, wheat, and wild oats.

(h) *Sieve, 0.064 x ⅜ oblong-hole.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 inch.

(i) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not readily disintegrate in water.

(j) *Test weight per bushel.* The weight per Winchester bushel (2, 150.42 cubic-inch capacity) as determined on a dockage-free portion of the original sample using an approved device in accordance with instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(k) *Thin rye.* Rye and other matter that will readily pass through a 0.064 x ⅜ inch oblong-hole sieve.

[49 FR 22060, May 25, 1984, as amended at 49 FR 24509, June 14, 1984]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 810.403 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

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[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information on approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, temperature, an unknown foreign substance(s), and a commonly recognized harmful or toxic substance(s) shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage, except the determination of odor shall be upon either the basis of the grain as a whole or the grain when free from dockage.

[49 FR 22060, May 25, 1984, as amended at 49 FR 24509, June 14, 1984]

§ 810.404 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the rye standards are applicable to rye produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of rye may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.405 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state .046 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number, e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of rye and the percentage of dockage and ergot. The percentage when determining the identity of rye shall be stated to the nearest whole percent. The percentage of dockage when equal to one percent or more shall be stated in terms of whole percent, and when less than one percent shall not be stated. A fraction of a percent shall not be disregarded. The percentage of ergot shall be stated to the nearest hundredth percent.

[49 FR 22060, May 25, 1984, as amended at 49 FR 24509, June 14, 1984]

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.406 Grades and grade requirements for rye. (See also § 810.408.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—			
		Damaged kernels		Foreign material	
		Total (percent)	Heat damaged (percent)	Total (percent)	Foreign matter other than wheat (percent)
U.S. No. 1 [1]	56.0	2.0	0.2	3.0	1.0
U.S. No. 2 [1]	54.0	4.0	0.2	6.0	2.0
U.S. No. 3 [1]	52.0	7.0	0.5	10.0	4.0
U.S. No. 4	49.0	15.0	3.0	10.0	6.0

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—			
		Damaged kernels		Foreign material	
		Total (percent)	Heat damaged (percent)	Total (percent)	Foreign matter other than wheat (percent)

U.S. Sample grade. U.S. Sample grade shall be rye which:

(1) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(2) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of rye; or

(3) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(4) Is heating or otherwise of distinctly low quality.

[1] Rye in grade U.S. No. 1 may contain not more than 10.0 percent, in grade U.S. No. 2 not more than 15.0 percent, and in grade U.S. No. 3 not more than 25.0 percent of thin rye.

[49 FR 22060, May 25, 1984, as amended at 49 FR 24509, June 14, 1984]

§ 810.407 Grade designations.

(a) *Grade designations for rye.* The grade designations for rye shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the special grade "Plump", if applicable (see also § 810.409); (4) the word "Rye"; (5) each applicable special grade except "Plump" (see also § 810.409) and, when applicable, the word "dockage" together with the percentage thereof.

(b) *Optional grade designations.* Rye may be certificated (under certain conditions),[4] when supported by official analysis, as "U.S. No. 2 or better Rye," "U.S. No. 3 or better Rye," etc. The special grade designation and dockage, when applicable, also shall be included (under certain conditions)[4] in the certification.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.408 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 801.406. Such special grades are established and determined as follows:

(a) *Plump rye.* Rye which contains not more than 5.0 percent of rye and other matter that will pass through a 0.064 x ⅜ oblong-hole sieve.

(b) *Ergoty rye.* Rye which contains more than 0.30 percent of ergot.

(c) *Light garlicky rye.* Rye which contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Garlicky rye.* Rye which contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(e) *Light smutty rye.* Rye which has an unmistakable odor of smut, or which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(f) *Smutty rye.* Rye which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(g) *Weevily rye.* Rye which is infested with live weevils or other insects injurious to stored grain, as set forth in the Grain Inspection Handbook.[2]

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[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

[2] See footnote 2 to § 810.402.

§ 810.409 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.407. The grade designation for plump rye shall include, preceding the word "Rye", the word "Plump", as warranted, and all other information prescribed in § 810.407. The grade designation for ergoty, light garlicky, garlicky, light smutty, smutty, and weevily rye shall include, following the word "Rye", the word(s) "Ergoty", "Light garlicky", "Garlicky", "Light smutty", "Smutty", or "Weevily", as warranted, and all other information prescribed in § 810.407.

UNITED STATES STANDARDS FOR MIXED GRAIN[1]

AUTHORITY: Sections 810.451 through 810.459 were issued under secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)).

SOURCE: Sections 810.451 through 810.459 appear at 49 FR 3445, Jan. 27, 1984, unless otherwise noted.

TERMS DEFINED

§ 810.451 Definition of mixed grain.

Mixed grain shall be any mixture of grains for which standards have been established under the United States Grain Standards Act, *Provided that,* Such mixture does not come within the requirements of any of the standards for such grains and that such mixture consists of 50 percent or more of whole kernels of grain and/or whole and broken soybeans which will not pass through a 5/64 inch triangular-hole sieve and/or whole flaxseed passing through such a sieve.

§ 810.452 Definition of other terms.

(a) *Grades. U.S. Mixed Grain,* or *U.S. Sample grade Mixed Grain,* and special grades provided for in § 810.458.

(b) *Foreign material and fines.* All material except whole flaxseed which passes through a 5/64 inch triangular-hole sieve, and all material other than grains for which standards have been established under the Act, remaining on top of the sieve.

(c) *Damaged kernels.* Kernels and pieces of kernels of grains for which standards have been established under the Act, which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, moldy, diseased, or otherwise materially damaged.

(d) *Heat-damaged kernels.* Kernels and pieces of kernels of grain for which standards have been established under the Act, and which have been materially discolored and damaged by heat.

(e) *Moisture.* Water content in mixed grain as determined by an approved device in accordance with procedures prescribed in the Equipment Handbook[2] for the kind of grain which predominates in the mixture. For the purpose of this paragraph, *approved device* shall include any equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(g) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a test portion of the representative sample using a approved device in accordance with instruction in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed in whole and half pounds; a fraction of a half pound shall be disregarded. For the purpose of this paragraph, *approved device* shall include any equipment that is approved by the

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[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

[2] The Equipment Handbook and the Grain Inspection Handbook copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, D.C. 20250.

[3] Requests for information on approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

Administrator as giving equivalent results.[3]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 810.453 Basis of determination.

Damaged and heat-damaged kernels, and the percentage of each kind of grain in the mixture shall be on the basis of the sample after removal of foreign material and fines. Test weight, moisture, odor, and foreign material and fines shall be determined on the basis of the sample as a whole. Determinations of definition are also made on the basis of the sample as a whole.

§ 810.454 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the mixed grain standards are applicable to grain produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of grain may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.455 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; for example, state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure to be rounded only; for example, state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure; for example, state 0.45 as 0.4. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; for example, state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the definition, the percentage of each kind of grain, and foreign material and fines, which are stated in terms of whole percent.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.456 Grades and grade requirements.

(a) *U.S. Mixed Grain* (*Grade*). Mixed grain with not more than 15.0 percent of damaged kernels, and not more than 3.0 percent of heat-damaged kernels, and which otherwise does not meet the requirements for the grade *U.S. Sample grade Mixed Grain.*

(b) *U.S. Sample grade Mixed Grain.* Mixed grain which does not meet the requirements for the grade U.S. Mixed Grain; or which contains more than 16.0 percent of moisture; or which contains stones; or which contains more than 2 crotalaria seeds (*Crotalaria* spp.) in 1,000 grams of grain; or which is musty, or sour, or heating; or which has any commercially objectionable foreign odor except of smut or garlic; or which is otherwise of distinctly low quality.

§ 810.457 Grade designation.

(a) *Grade designation for Mixed Grain.* The grade designation for mixed grain shall include the words *U.S. Mixed Grain* or *U.S. Sample grade Mixed Grain,* and the name of each applicable special grade. The name and the approximate percentage of each kind of grain which constitutes 10.0 percent or more of the mixture in the order of predominance and when applicable, the words *other grains* followed by a statement of the percentage of the combined quantity of those kinds of grains, each of which is present in quantity less than 10.0 percent shall be shown in the remarks section of the certificate.

(b) *Optional grade designation.* Mixed grain may be certificated under certain conditions,[4] when supported by

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[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained

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official analysis as *U.S. Sample grade or better Mixed Grain.* The special grade designation, when applicable, also shall be included (under certain conditions [4]) in the certification.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS AND SPECIAL GRADE DESIGNATIONS

§ 810.458 Special grades and special grade requirements.

(a) *Smutty mixed grain.* (1) Mixed grain in which wheat, rye, or triticale predominates, and which contains balls, portions of balls, or spores of smut in excess of a quantity equal to 14 balls of average size in 250 grams of mixed grain, or (2) any other mixed grain which has the kernels covered with smut spores, or which contains smut masses and/or smut balls in excess of 0.2 percent.

(b) *Ergoty mixed grain.* Mixed grain which contains ergot in excess of 0.10 percent.

(c) *Garlicky mixed grain.* (1) Mixed grain in which wheat, rye, or triticale predominates, and which contains 2 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 1,000 grams of mixed grain; or (2) any other mixed grain which contains 4 or more green garlic bulblets, or an equivalent quantity or dry or partly dry bulblets, in 500 grams of mixed grain.

(d) *Weevily mixed grain.* Mixed grain which is infested with live weevils or other insects injurious to stored grain.

(e) *Blighted mixed grain.* Mixed grain in which barley predominates and which, as a whole, contains more than 4.0 percent of barley damaged or materially discolored by blight and/or mold.

(f) *Treated mixed grain.* Mixed grain which has been scoured, limed, washed, sulfured, or treated in such a manner that its true quality is not reflected by the grade designation *U.S. Mixed Grain* or *U.S. Sample grade Mixed Grain.*

§ 810.459 Special grade designations.

(a) The special grade designation for smutty, ergoty, garlicky, weevily, and blighted mixed grain shall include as applicable, following the terms *U.S. Mixed Grain* or *U.S. Sample grade Mixed Grain,* the word(s) *Smutty, Ergoty, Garlicky, Weevily,* or *Blighted,* and all other information prescribed in § 810.457.

(b) The special grade designation for treated mixed grain shall include, the word *Treated,* followed by a statement indicating the kind of treatment (that is, scoured, limed, washed, or sulfured).

UNITED STATES STANDARDS FOR FLAXSEED

SOURCE: Sections 810.501 through 810.514 appear at 30 FR 4605, Apr. 9, 1965; 30 FR 5760, Apr. 23, 1965, unless otherwise noted. Redesignated at 45 FR 15872, Mar. 11, 1980.

EFFECTIVE DATE NOTE: At 49 FR 49427, Dec. 20, 1984, the United States Standards for Flaxseed (§§ 810.501 through 810.514) were revised, effective July 13, 1986. For the convenience of the user, the text remaining in effect until July 13, 1986, appears as follows:

§ 810.501 Terms defined.

For the purposes of the United States Standards for Flaxseed (Linum usitatissimum), the terms specified in §§ 810.502 through 810.506 shall have the meanings stated in said sections, respectively.

[30 FR 4605, Apr. 9, 1965; 30 FR 5760, Apr. 23, 1965, as amended at 39 FR 1351, Jan. 8, 1974. Redesignated at 45 FR 15872, Mar. 11, 1980]

§ 810.502 Flaxseed.

Flaxseed shall be any grain which, before the removal of dockage, consists of 50 percent or more of flaxseed and not more than 20 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act.

§ 810.503 Dockage.

Dockage shall be all matter other than flaxseed, also underdeveloped and shriveled flaxseed and small pieces of flaxseed removed in properly separating the material other than

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from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, D.C. 20250.

flaxseed and which cannot be recovered by properly rescreening or recleaning. (See also §§ 810.509 and 810.514.)

§ 810.504 Damaged flaxseed.

Damaged flaxseed shall be flaxseed and pieces of flaxseed which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, moldy, diseased, or otherwise materially damaged.

§ 810.505 Heat-damaged flaxseed.

Heat-damaged flaxseed shall be flaxseed and pieces of flaxseed which are materially discolored and damaged by heat.

§ 810.506 Stones.

Stones shall be concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

§ 810.507 Principles governing application of standards.

The principles stated in §§ 810.508 through 810.511 shall apply in the determination of the grades of flaxseed.

§ 810.508 Basis of determinations.

Each determination of moisture, test weight per bushel, heat-damaged flaxseed, and damaged flaxseed shall be upon the basis of the grain after the removal of that part of the dockage which can be removed readily by the use of appropriate sieves and cleaning devices. All other determinations shall be upon the basis of the grain as a whole, except the determination of odor shall be upon either the basis of the grain as a whole or the grain after the removal of that part of the dockage which can be removed readily by the use of approved sieves and cleaning devices.

[48 FR 44167, Sept. 28, 1983]

§ 810.509 Percentages.

All percentages shall be upon the basis of weight. Percentages except for dockage shall be expressed in whole and tenth percent to the nearest tenth of a percent. The percentage of dockage when equal to 1 percent or more shall be stated in terms of whole percent and when less than 1 percent shall not be stated. A fraction of a percent of dockage shall be disregarded.

§ 810.510 Moisture.

Moisture shall be ascertained by use of the equipment and procedure prescribed by the Consumer and Marketing Service, U.S. Department of Agriculture. (Information thereon may be obtained from said Service.)

§ 810.511 Test weight per bushel.

Test weight per bushel shall be the weight per Winchester bushel as determined by the method prescribed by the U.S. Department of Agriculture as described in Circular No. 921, issued June 1953. Test weight per bushel shall be expressed in whole and half pounds. A fraction of a half pound shall be disregarded.

§ 810.512 Grades.

Grades shall be the U.S. numerical grades and U.S. Sample grade provided for in § 810.513.

[34 FR 3594, Feb. 28, 1969. Redesignated at 45 FR 15872, Mar. 11, 1980]

§ 810.513 Grades and grade requirements for flaxseed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—	
		Heat-damaged flaxseed (percent)	Damaged flaxseed (total) (percent)
U.S. No. 1	49	0.2	10.0
U.S. No. 2	47	.5	15.0
U.S. Sample grade—			

U.S. Sample grade shall be flaxseed which does not meet the requirements for grade U.S. No. 1 or U.S. No. 2; or which contains more than 9.5 percent of moisture; or which contains castor beans (*Ricinus communis*), crotalaria seeds (Crotalaria *spp.*), stones, unknown foreign substances, or commonly recognized harmful or toxic substances; or which is musty, sour, or heating; or which has any commercially objectionable foreign odor; or which is otherwise of distinctly low quality.

[34 FR 3594, Feb. 28, 1969. Redesignated at 45 FR 15872, Mar. 11, 1980]

§ 810.514 Grade designations.

(a) *Grade designations for flaxseed.* The grade designation for flaxseed shall include, in the following order: (1) The letters "U.S."; (2) The number of the grade or the words "Sample grade"; (3) The word "flaxseed"; and (4) When applicable, the word "dockage" together with the percentage thereof.

(b) *Optional grade designations.* Flaxseed may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Flaxseed" or "U.S. Sample grade or better Flaxseed." Dockage, when applicable, also shall be included (under certain conditions [4]) in the certification.

[42 FR 30146, June 13, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980]

EFFECTIVE DATE NOTE: At 49 FR 49427, Dec. 20, 1984, the United States Standards for Flaxseed (§§ 810.501 through 810.507) were revised, effective July 13, 1986. The text currently in effect appears above. The text effective July 13, 1986, appears as follows:

UNITED STATES STANDARDS FOR FLAXSEED [1]

AUTHORITY: Sections 810.501 through 810.507 were issued under secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

SOURCE: Sections 810.501 through 810.507 appear at 49 FR 49427, Dec. 20, 1984, unless otherwise noted.

TERMS DEFINED

§ 810.501 Definition of flaxseed.

The grain of common flaxseed (*Linum usitatissimum L.*) which, before the removal of the dockage, consists of 50 percent or more of flaxseed and not more than 20 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole flaxseed.

§ 810.502 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) *Damaged flaxseed.* Flaxseed and pieces of flaxseed which are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged, in the sample after the removal of dockage.

(b) *Distinctly low quality.* Flaxseed which obviously is of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include the presence of any objects too large to enter the sampling device; i.e., large stones, wreckage, or similar objects.

(c) *Dockage.* All matter other than flaxseed which can be removed readily from a portion of the original sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] Also, underdeveloped, shriveled, and small pieces of flaxseed removed in separating the material other than flaxseed and which cannot be recovered by properly rescreening or recleaning. (See also § 810.505 and § 810.507.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(d) *Heat-damaged flaxseed.* Flaxseed and pieces of flaxseed which are materially discolored and damaged by heat.

(e) *Moisture.* Water content in flaxseed as determined by an approved device following precedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, wheat, and wild oats.

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[4] The conditions are listed in the Grain Inspection Manual, GR Instruction 918-6. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

(g) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(h) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage-free test portion of the original sample using an approved device following instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed in whole and half pounds. A fraction of a half pound shall be disregarded. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

PRINCIPLES GOVERNING THE APPLICATION OF THE STANDARDS

§ 810.503 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of the definition of flaxseed, rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, stones, an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), and otherwise distinctly low quality, shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from mechanically separated dockage, except the determination of odor shall be upon either the basis of the grain as a whole or the grain when free from mechanically separate dockage.

§ 810.504 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the flaxseed standards are applicable to flaxseed produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of flaxseed may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.505 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the percentage of dockage. The percentage of dockage when equal to one percent or more shall be stated in terms of whole percent, and when less than one percent shall not be stated. A fraction of a percent of dockage shall be disregarded.

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[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculturé, 1400 Independence Avenue, SW., Washington, D.C. 20250.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.506 Grades and grade requirements for flaxseed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—	
		Heat damaged flaxseed (percent)	Damaged flaxseed (total) (percent)
U.S. No. 1	49.0	0.2	10.0
U.S. No. 2	47.0	0.5	15.0

U.S. sample grade—U.S. sample grade shall be flaxseed which:

(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more pieces of rodent pellets, bird droppings, or other animal filth; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise or distinctly low quality.

§ 810.507 Grade designations.

(a) *Grade designations for flaxseed.* The grade designations for flaxseed shall include in the following order: (1) The letters "U.S. "; (2) the number of the grade or the words "Sample grade"; (3) the word "Flaxseed"; and (4) when applicable, the word "dockage" together with the percentage thereof.

(b) *Optional grade designations.* Flaxseed may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Flaxseed" or "U.S. Sample grade or better Flaxseed". Dockage, when applicable, also shall be included (under certain conditions [4]) in the certification.

UNITED STATES STANDARDS FOR SORGHUM [1]

SOURCE: Sections 810.551 through 810.560 appear at 39 FR 3944, Jan. 31, 1974, unless otherwise noted. Redesignated at 45 FR 15872, Mar. 11, 1980.

TERMS DEFINED

§ 810.551 Definition of sorghum.

Grain which, before the removal of dockage, consists of 50 percent or more of whole kernels of sorghum (*Sorghum vulgare*) excluding nongrain sorghum and which contains not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act. Whole kernels, for purposes of this determination, shall be sorghum with ¼ or less of the kernel removed.

§ 810.552 Definitions of other terms.

For the purposes of these standards the following terms shall have the meanings stated below:

(a) *Broken kernels, foreign material, and other grains.* All material, including whole kernels of sorghum and pieces of kernels of sorghum (except dockage) which may be removed from a test portion of the original sample by use of an approved device, and by handpicking a portion of the sample, in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

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[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] Grain Inspection Manual, GR Instruction 918-6, revised August 28, 1972. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Grain

Continued

(b) *Classes.* The following four classes:

(1) *White Sorghum.* Sorghum with white or translucent pericarps. Such sorghum containing spots which singly or in combination cover 25.0 percent or less of the kernel shall be considered as White Sorghum. White Sorghum shall contain not more than 2.0 percent (singly or combined) of kernels of sorghum of other colors.

(2) *Yellow Sorghum.* Sorghum with yellow, salmon-pink, red, white, or translucent pericarps, which contains not more than 10.0 percent of sorghum with brown pericarps or pigmented subcoats, and which does not meet the requirements for the class White Sorghum.

(3) *Brown Sorghum.* Sorghum with brown pericarps or pigmented subcoats which contains not more than 10.0 percent of sorghum of other colors.

(4) *Mixed Sorghum.* Sorghum which does not meet the requirements for any of the classes White Sorghum, Yellow Sorghum or Brown Sorghum.

(c) *Damaged kernels (total).* Kernels and pieces of kernels of sorghum and other grains which are heat-damaged, sprout-damaged, frost-damaged, badly ground-damaged, badly weather-damaged, mold-damaged, diseased, insect-bored, or otherwise materially damaged.

(d) *Distinctly low quality.* Sorghum which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state of condition, and which cannot be graded by use of the other grading factors provided in the standards.

(e) *Dockage.* Material that will pass through a 2 1/2/64 inch round-hole sieve (see paragraph (k) of this section), including pieces of sorghum, which may be removed from a test portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Heat-damaged kernels.* Kernels and pieces of kernels of sorghum and other grains which are materially discolored and damaged as a result of heating.

(g) *Moisture.* Water content in sorghum as determined by an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(h) *Nongrain sorghum.* Seeds of broomcorn, johnsongrass, sorghum almum, sorghum-sudangrass hybrids, sorgrass, sudangrass, and sweet sorghum (sorgo).

(i) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, soybeans, spelt, sweet corn, triticale, wheat, and wild oats.

(j) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(k) *Sieves*—(1) *5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.[3]

(2) *2-1/2/64 round-hole sieve.* A metal sieve 0.032 inch thick with round holes 2-1/2/64 inch in diameter.[3]

(l) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(m) *Test weight per bushel.* Test weight per bushel shall be the weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on a test portion of the original sample by an approved device in accordance with instructions in the Grain Inspection Manual.[2] For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any

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Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782.

[2,3] See footnotes 2 and 3 to § 810.552.

other equipment that is approved by the Administrator as giving equivalent results.[3] Test weight per bushel shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 51.1 through 51.4 shall be 51.0, and 51.5 through 51.9 shall be 51.5.

[39 FR 3944, Jan. 31, 1974. Redesignated at 45 FR 15872, Mar. 11, 1980 and amended at 48 FR 44169, Sept. 28, 1983]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 810.553 Basis of determinations.

Each determination of "broken kernels, foreign material, and other grains" shall be determined on a test portion of the grain sample when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones shall be determined on a test portion of the grain sample when free from dockage, and that portion of the "broken kernels, foreign material, and other grains" which will pass through a 5/64 inch triangular-hole seive (see § 810.552(k)). All other determinations shall be on a test portion of the original sample, except the determination of odor shall be on either a test portion of the original sample, except the determination of odor shall be on either a test portion of the original sample or a test portion of the grain sample when free from dockage, and that part of the "broken kernels, foreign material, and other grains" which will pass through a 5/64 inch triangular-hole sieve.

[48 FR 44167, Sept. 28, 1983]

§ 810.554 Temporary adjustments in equipment and procedures.

The equipment and procedures referred to in the sorghum standards are applicable to sorghum produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of sorghum may require temporary, nonsubstantive adjustments in the procedures or equipment to obtain results expected under normal conditions. Adjustments in interpretations (i.e., identity, class, quality, and condition) are excluded and shall not be made. When these adjustments are necessary, Grain Division Field Offices, Official Inspection Agencies and interested parties in the grain trade will be notified promptly in writing of the change.

§ 810.555 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure, e.g., 0.46, report as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, round to the next lowest figure, e.g., 0.54, report as 0.5.

(3) When the figure to be rounded is even and it is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and it is followed by 5, round the figure to the next highest number, e.g., 0.45, report as 0.4; 0.55, report as 0.6.

(b) Percentages, except for dockage shall be stated in whole and tenth percent to the nearest tenth percent. The percentage of dockage when equal to one percent or more shall be stated as a whole percent; a fraction of a percent shall be disregarded.

(c) The percentage of "broken kernels, foreign material, and other grains" shall be the sum of the percentage determined for the mechanically separated portion and the percentage determined for the handpicked portion in accordance with instructions in the Grain Inspection Manual.

§ 810.557 Grades and grade requirements for all classes of sorghum. (see also § 810.559)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged kernels		Broken kernels, foreign material, and other grains (percent)
		Total (percent)	Heat damaged (percent)	
U.S. No. 1	57.0	2.0	0.2	4.0
U.S. No. 2	55.0	5.0	0.5	8.0
U.S. No. 3 [1]	53.0	10.0	1.0	12.0
U.S. No. 4	51.0	15.0	3.0	15.0

U.S. Sample grade:

U.S. Sample grade shall be sorghum which—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4, or

(b) Contains more than 7 stones which have an aggregate weight in excess of 0.2 percent of the sample weight or more than 2 crotalaria seeds (Crotalaria spp.) per 1,000 grams of sorghum, or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut odor), or

(d) Is badly weathered, heating, or distinctly low quality [see § 810.552(d)].

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e))

[49 FR 35744, Sept. 12, 1984; 49 FR 37369, Sept. 24, 1984; 49 FR 46347, Nov. 26, 1984]

§ 810.558 Grade designations.

(a) *Grade designations for sorghum.* The grade designations for sorghum shall include in the following order: (1) The letters "U.S.," (2) the number of the grade or the words "Sample grade," (3) the class, (4) each applicable special grade (see § 810.560), and (5) when applicable, the words "dockage" together with the percentage thereof. The grade designation for the class "Mixed Sorghum" shall include, following the words "Mixed Sorghum," the approximate percentage of each class of sorghum in the mixture in the order of predominance.

(b) *Optional grade designations.* Sorghum may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Sorghum," "U.S. No. 3 or better Sorghum," etc. The optional grade designation for sorghum shall include the name of the applicable class immediately preceding the word "sorghum" in the grade designation. The special grade designations and dockage, when applicable, also shall be included (under certain conditions [4]) in the certification.

[42 FR 30146, June 13, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.559 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.557. Such special grades are established and determined as follows:

(a) *Smutty sorghum.* Sorghum which is covered with smut spores or which contains 20 or more smut masses in 100 grams of sorghum.

(b) *Weevily sorghum.* Sorghum which is infested with live weevils or other live insects injurious to stored grain. As applied to sorghum the meaning of the term "infested" is set forth in Chapter IX of the Grain Inspection Manual.[2]

§ 810.560 Special grade designations.

The grade designation for smutty or weevily sorghum shall include, following the class, the word(s) "Smutty" or

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[4] The conditions are listed in the Grain Inspection Manual, GR Instruction 918-6. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

[2] See footnote 2 to § 810.552.

"Weevily," as warranted, and all other information prescribed in § 810.558.

For a period of 6 months after adoption of these amendments grain inspectors shall, upon request, show on inspection certificates the grade under both the "old" and "new" standards.

UNITED STATES STANDARDS FOR SOYBEANS [1]

Source: Sections 810.601 through 810.609 appear at 50 FR 18457, May 1, 1985, unless otherwise noted.

TERMS DEFINED

§ 810.601 Definition of soybeans.

Grain which consists of 50 percent or more of whole or broken soybeans (*Glycine max* (L.) Merr.) which will not pass readily through an 8/64-inch sieve and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.602 Definition of other terms.

For the purposes of these standards the following terms shall have the meaning stated below:

(a) *Classes.* There are two classes for soybeans:

(1) *Yellow soybeans.* Soybeans which have yellow or green seed coats, and which in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors.

(2) *Mixed soybeans.* Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels.* Soybeans and pieces of soybeans which are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stinkbug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Distinctly low quality.* Soybeans which are of obviously inferior quality because they are in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling devices; i.e., large stones, wreckage, or similar objects.

(d) *Foreign material.* All matter, including soybeans and pieces of soybeans, which will readily pass through an 8/64-inch sieve and all matter other than soybeans remaining on the sieve after sieving.

(e) *Heat-damaged kernels.* Soybeans and pieces of soybeans which are materially discolored and damaged by heat.

(f) *Moisture.* Water content in soybeans as determined by an approved device in accordance with procedures prescribed in FGIS Instructions.[2]

(g) *Purple mottled or stained.* Soybeans which are discolored by the growth of a fungus; or by dirt; or by dirt-like substance(s) including nontoxic inoculants; or by other nontoxic substances.

(h) *Soybeans of other colors.* Soybeans which have green, black, brown, or bicolored seed coats. Soybeans which have green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color shall cover 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(i) *Splits.* Soybeans with more than ¼ of the bean removed and which are not damaged.

(j) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

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[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] Requests for information concerning inspection and certification procedures, approved devices, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(k) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on the original sample using an approved device in accordance with procedures prescribed in FGIS Instructions.[2] Test weight per bushel is expressed in whole and half pounds with a fraction of a half pound disregarded.

(l) 8/64 *inch sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 (8/64) inch in diameter with approximately 4,736 perforations per square foot.

[50 FR 18457, May 1, 1985; 50 FR 23663, June 5, 1985]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 810.603 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of class, heat damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material.

(c) *All other determinations.* All other determinations are made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole at the time of sampling in accordance with procedures prescribed in the Grain Inspection Handbook.[2]

§ 810.604 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the soybean standard are applicable to soybeans produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of soybeans may require temporary modifications in equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.605 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., 0.46, report as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., 0.54, report as 0.5.

(3) When the figure to be rounded is even and followed by the figure 5, retain the even figure. When the figure to be rounded is odd and followed by the figure 5, round the figure to the next higher number; e.g., 0.45 report as 0.4; 0.55; report as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining splits. The percentage of splits is stated in whole percent with a fraction of a percent disregarded.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.606 Grades and grade requirements for soybeans.

The following grades and grade requirements are applicable under these standards. In Mixed soybeans, the factor "soybeans of other colors" will be disregarded.

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[2] See footnote 2 to § 810.602.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				
		Splits (percent)	Damaged kernels		Foreign material (percent)	Soybeans of other colors(percent)
			Total (percent)	Heat damaged (percent)		
U.S. No. 1	56.0	10.0	2.0	0.2	1.0	1.0
U.S. No. 2	54.0	20.0	3.0	0.5	2.0	2.0
U.S. No. 3 [1]	52.0	30.0	5.0	1.0	3.0	5.0
U.S. No. 4 [2]	49.0	40.0	8.0	3.0	5.0	10.0

U.S. Sample grade: U.S. Sample grade shall be soybeans which:

(a) Do not meet the requirements of U.S. No. 1, 2, 3, or 4: or

(b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of broken glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more pieces of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth in 1,000 grams of soybeans; or

(c) Have a musty, sour or commercially objectionable foreign odor (except garlic odor); or

(d) Are heating or otherwise of distinctly low quality.

[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.

[2] Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

[50 FR 18457, May 1, 1985; 50 FR 23663, June 5, 1985]

§ 810.607 Grade designations.

(a) *Grade designations for soybeans.* (See also § 810.608.) The grade designations for soybeans shall include in the following order: (1) The letters "U.S."; (2) The number of the grade or the words "Sample grade"; (3) The class; and (4) Each applicable special grade (See also § 810.609). In the case of Mixed soybeans, the grade designation shall also include, following the name of the class, the approximate percentages of Yellow soybeans and soybeans of other colors in the mixture.

(b) *Optional grade designations.* Soybeans may be certified (under certain conditions [2]) when supported by official analysis, as "U.S. No. 2 or better Soybeans," "U.S. No. 3 or better Soybeans," and the like. The optional grade designations for soybeans shall include the name of the applicable class immediately preceding the word "soybeans" on the grade designation. The special grade designation, when applicable, also shall be included (under certain conditions [2]) in the certification.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.608 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.606. Such special grades are established and determined as follows:

(a) *Garlicky soybeans.* Soybeans which contains 5 or more garlic bulblets in a 1,000 gram portion.

(b) *Infested soybeans.* Soybeans which are infested with live weevils or other insects injurious to stored grain as set forth in the Grain Inspection Handbook.[2]

§ 810.609 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.607. The grade designation for garlicky and infested soybeans shall include in the order listed, following the applicable class, the word "Garlicky" and "Infested," as warranted, and all other information prescribed in § 810.607.

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[2] See footnote 2 to § 810.602.

UNITED STATES STANDARDS FOR TRITICALE[1]

SOURCE: Sections 810.651 through 810.659 appear at 42 FR 9377, Feb. 16, 1977, unless otherwise noted. Redesignated at 45 FR 15872, Mar. 11, 1980.

TERMS DEFINED

§ 810.651 Definition of triticale.

Grain which, before the removal of dockage, consists of 50 percent or more of triticale and may contain not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of dockage, contains 50 percent or more of whole kernels of triticale.

§ 810.652 Definitions of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Damaged kernels (total).* Kernels, pieces of triticale kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged in the sample after the removal of dockage and shrunken and broken kernels.

(b) *Defects (total).* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor "Defects (total)" for each individual grade.

(c) *Distinctly low quality.* Triticale which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device; i.e., large stones wreckage etc.

(d) *Dockage.* All matter other than triticale which can be removed readily from a test portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in properly separating the material other than triticale and which cannot be recovered by properly rescreening or recleaning. (See also §§ 810.655 and 810.657.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(e) *Foreign material (total).* All matter other than triticale which remains in the sample after the removal of dockage and shrunken and broken kernels.

(f) *Heat-damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(g) *Moisture.* Water content in triticale as determined by an approved device in accordance with procedures prescribed in the Equipment Manual.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

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[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250.

(a) Equipment Manual, GR Instruction 916-6, effective September 25, 1968, as amended, U.S. Department of Agriculture, Agricultural Marketing Service.

(b) Grain Inspection Manual, GR Instruction 918-6, effective August 28, 1972, as amended, U.S. Department of Agriculture, Agricultural Marketing Service.Requests for information concerning aproved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250.

[3]

(h) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flax-seed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, wheat, and wild oats.

(i) *Shrunken and broken kernels.* All matter which can be removed from a test portion of the dockage-free sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph, "approved device" shall be the 0.064 x ⅜ inch oblong-hole sieve.[3]

(j) *Sieve, 0.064 x ⅜ oblong-hole.* A metal sieve 0.032 inch thick with oblong performations 0.064 inch by 0.375 (⅜) inch.

(k) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(l) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on a dockage-free test portion of the original sample using an approved device in accordance with instructions in the Grain Inspection Manual.[2] For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3] Test weight per bushel shall be expressed to the nearest tenth of a pound.

Effective Date Note: At 49 FR 49424, Dec. 20, 1984, § 810.652 (d), (g), (i), (l) and footnotes 2 and 3 were revised, effective May 1, 1986. The text currently in effect is shown above. The text effective May 1, 1986 appears as follows:

§ 810.652 Definition of other terms.

* * * * *

(d) *Dockage.* All matter other than triticale which can be removed readily from a test portion of the original sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2]Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in separating the material other than triticale and which cannot be recovered by properly rescreening or recleaning. (See also § 810.655 and § 810.657.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

* * * * *

(g) *Moisture.* Water content in triticale as determined by an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

* * * * *

(i) *Shrunken and broken kernels.* All matter which can be removed from a test portion of the dockage-free sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall be the 0.064×0.375 (⅜) inch oblong-hole sieve.[3]

* * * * *

(l) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage-free test portion of the original sample using an approved device following instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

Footnotes:

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service;

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Request for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250.

PRINCIPLES GOVERNING THE APPLICATION OF THE STANDARDS

§ 810.653 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, temperature, an unknown foreign substance, and a commonly recognized harmful or toxic substance shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage; except that the determination of heat-damaged kernels, damaged kernels (total), material other than wheat or rye, and foreign material (total) shall be upon the basis of the grain when free from dockage and shrunken and broken kernels; and the determination of odor shall be upon either the basis of the sample as a whole or the grain when free from dockage.

[42 FR 9377, Feb. 16, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980, and amended at 48 FR 44168, Sept. 28, 1983]

§ 810.654 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the triticale standards are applicable to triticale produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvesting of triticale may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, Federal Grain Inspection Service Field Offices, official inspection agencies, and interested parties in the grain trade will be notified promptly in writing of the modification. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

EFFECTIVE DATE NOTE: At 49425, Dec. 20, 1984, § 810.654 was revised, effective May 1, 1986. The text currently in effect is shown above. The text effective May 1, 1986, appears as follows:

§ 810.654 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the triticale standards are applicable to triticale produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of triticale may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

§ 810.655 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and it is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and it is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of triticale and the percentage of dockage and ergot. The percentage when determining the identity of triticale shall be stated to the nearest whole percent. The percentage of dockage when equal to one-half percent or more shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, with other fractions disregarded as shown in the following examples: Dockage ranging from 0.5 to 0.9 percent shall be expressed as 0.5 percent, from 1.0 to 1.4 percent as 1.0 percent, from 1.5 to 1.9 percent as 1.5 percent, etc. The percentage of ergot shall be stated to the nearest hundredth percent.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.656 Grades and grade requirements for triticale.

(See also § 810.658.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged kernels		Foreign material		Shrunken broken kernels (percent)	Defects (total) [3] (percent)
		Heat-damaged (percent)	Total [1] (percent)	Material other than wheat or rye (percent)	Total [1] (percent)		
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0

U.S. Sample grade:

U.S. Sample grade shall be triticale which:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains a quantity of smut so great that one or more of the grade requirements cannot be determined accurately; or

(c) Contains 8 or more stones; 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 3 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of triticale; or

(d) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(e) Is heating or otherwise of distinctly low quality.

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[1] Includes heat-damaged kernels.

[2] Includes material other than wheat or rye.

[3] Defects (total) includes damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for "defects (total)" for each numerical grade.

[42 FR 9377, Feb. 16, 1977, as amended at 42 FR 10996, Feb. 25, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980]

Effective Date Note: At 49 FR 49425, Dec. 20, 1984, § 810.656 was revised, effective May 1, 1986. The text currently in effect is shown above. The text effective May 1, 1986, appears as follows:

§ 810.656 Grades and grade requirements for triticale.

(See also § 810.658.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged kernels		Foreign material		Shrunken and broken kernels (percent)	Defects (Total) [3] (percent)
		Heat-damaged (percent)	Total [1] (percent)	Material other than wheat or rye (percent)	Total [2] (percent)		
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0

U.S. Sample grade—U.S. Sample grade shall be triticale which:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of triticale; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels.

[2] Includes material other than wheat or rye.

[3] Defects (total) includes damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for "defects (total)" for each numerical grade.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

[49 FR 49425, Dec. 20, 1984; 50 FR 5733, Feb. 12, 1985]

§ 810.657 Grade designations.

(a) *Grade designations for triticale.* The grade designations for triticale shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the word "triticale"; (4) each applicable special grade (see also § 810.659); and (5) when applicable, the word "dockage" together with the percentage thereof.

(b) *Optional grade designations.* Triticale may be certificated (under certain conditions[4]), when supported by official analysis, as "U.S. No. 2 or better Triticale," "U.S. No. 3 or better Triticale," etc. The special grade designations and dockage, when applicable, also shall be included (under certain conditions[4]) in the certification.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

[42 FR 30147, June 13, 1977. Redesignated at 45 FR 15872, Mar. 11, 1980]

EFFECTIVE DATE NOTE: At 49 FR 49425, Dec. 20, 1984, § 810.657 footnote 4 was revised, effective May 1, 1986. The text currently in effect is shown above. The text effective May 1, 1986, appears as follows:

§ 810.657 Grade designations.

* * * * *

(b) * * * [4]

Footnote:

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.658 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.656. Such special grades are established and determined as follows:

(a) *Ergoty triticale.* Triticale which contains more than 0.10 percent of ergot.

(b) *Light garlicky triticale.* Triticale which contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets.

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[4] The conditions are listed in the Grain Inspection Manual, GR Instruction 918-6. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(c) *Garlicky triticale.* Triticale which contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Light smutty triticale.* Triticale which has an unmistakable odor of smut, or which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(e) *Smutty triticale.* Triticale which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(f) *Weevily triticale.* Triticale which is infested with live weevils or other insects injurious to stored grain. As applied to triticale, the meaning of the term "infested" is set forth in the Grain Inspection Manual.[2]

EFFECTIVE DATE NOTE: At 49 FR 49425, Dec. 20, 1984, § 810.658(f) was revised, effective May 1, 1986. The text currently in effect is shown above. The text effective May 1, 1986, appears as follows:

§ 810.658 Special grades and special grade requirements.

* * * * *

(f) *Weevily triticale.* Triticale which is infested with live weevils or other insects injurious to stored grain. As applied to triticale, the meaning of the term "infested" is set forth in the Grain Inspection Handbook.[2]

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

Footnote:

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

§ 810.659 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.657. The grade designation for ergoty, light garlicky, garlicky, light smutty, smutty, and weevily triticale shall include in the order listed, following the word Triticale, the word(s) "Ergoty," "Light garlicky," "Garlicky," "Light smutty," "Smutty," and "Weevily," as warranted.

UNITED STATES STANDARDS FOR SUNFLOWER SEED[1]

AUTHORITY: Sections 810.701 through 810.709 were issued under secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76, 87(e)).

SOURCE: Sections 810.701 through 810.709 appear at 49 FR 22765, June 1, 1984, unless otherwise noted.

TERMS DEFINED

§ 810.701 Definition of sunflower seed.

Sunflower seed (*Helianthus annuus* L.) shall be any grain which, before the removal of foreign material, consists of 50.0 percent or more of cultivated sunflower seed and not more than 10.0 percent of other grains for which standards have been established by the Administrator pursuant to section 4(a) of the Act (7 U.S.C. 76) such as wheat, corn, barley, oats, rye, sorghum, flaxseed, soybeans, and triticale.

§ 810.702 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) *Cultivated sunflower seed.* Sunflower seed grown for oil content. The term "seed" in this and other definitions related to sunflower seed refers to both the kernel and hull which is a "fruit" or "achene".

(b) *Dehulled seed.* Sunflower seed which has the hull completely removed from the sunflower kernel.

(c) *Damaged sunflower seed (total).* Seed and pieces of seed that are heat-damaged, sprout-damaged, frost-damaged, badly weather-damaged, mold-damaged, diseased, or otherwise materially damaged.

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[2] See footnote 2 to § 810.652.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of the Federal Food, Drug, and Cosmetic Act or other Federal laws.

(d) *Distinctly low quality.* Sunflower seed which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device (for example, large stones, wreckage, and the like).

(e) *Foreign material.* All matter other than whole sunflower seeds containing kernels which may be removed from a test portion of the original sample by use of an approved device and by handpicking a portion of the sample in accordance with procedures prescribed in the Grain Inspection Handbook.[2]

(f) *Heat-damaged sunflower seed.* Seed and pieces of seed which have been materially discolored and damaged by heat.

(g) *Hull (Husk).* The ovary wall of the sunflower seed.

(h) *Kernel.* The interior contents of the sunflower seed which are surrounded by the hull.

(i) *Moisture.* Water content in sunflower seed as determined by an approved device in accordance with procedures prescribed in the Grain Inspection Handbook[2] and Equipment Handbook.[3] For the purpose of this paragraph "approved device" shall include any equipment or method approved by the Administrator.[3]

(j) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(k) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a mechanically cleaned portion of the original sample by an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] Test weight per bushel shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 28.0 through 28.4 shall be 28.0 and 28.5 through 28.9 shall be 28.5.

PRINCIPLES GOVERNING THE APPLICATION OF THE STANDARDS

§ 810.703 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, foreign material, live weevils or insects injurious to sunflower seed, moisture, temperature, unknown foreign substance, and any commonly recognized harmful or toxic substance shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of sunflower seed after removal of foreign material by an approved device, except the determination of odor shall be upon either the basis of the grain as a whole or the grain after removal of foreign material by an approved device.

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[2] The following publications are referenced in these standards. Copies may be obtained from the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, as amended, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, as amended, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, D.C. 20250.

[2] See footnote 2 to § 810.702.

§ 810.704 Temporary modifications in equipment and procedures.

The equipment and procedures referenced in the sunflower seed standards are applicable to sunflower seed produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvesting of sunflower seed may require minor temporary modifications in equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, Federal Grain Inspection Service Offices, official inspection agencies, and interested parties in the grain trade will be notified promptly in writing of the modification. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.705 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and it is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and it is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of sunflower seed and the percentage of foreign material. The percentage when determining the identity of sunflower seed shall be stated to the nearest whole percent. The percentage of foreign material shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, as shown in the following examples: Foreign material ranging from 0.0 to 0.25 shall be expressed as 0.0 percent, from 0.26 to 0.75 shall be expressed as 0.5 percent, from 0.76 to 1.25 percent as 1.0 percent, from 1.26 to 1.75 percent as 1.5 percent, etc.

§ 810.706 Grades and grade requirements for sunflower seed. (See also, § 810.708.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged sunflower seed		Dehulled seed (percent)
		Heat damage (percent)	Total (percent)	
U.S. No. 1	25.0	0.5	5.0	5.0
U.S. No. 2	25.0	1.0	10.0	5.0
U.S. Sample grade:				

U.S. Sample grade shall be sunflower seed which:

(1) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or

(2) In a 600 gram sample, contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown substance(s), or 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth; or

(3) Has a musty, sour, or commercially objectionable foreign odor; or

(4) Is heating or otherwise of distinctly low quality.

§ 810.707 Grade designations.

(a) *Grade designation for sunflower seed.* The grade designation for sunflower seed shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the words "Sunflower Seed"; and (4) the special grade, if applicable (see also § 810.709).

(b) *Optional grade designations.* Sunflower seed may be certificated (under certain conditions outlined in the Grain Inspection Handbook [2]) when supported by official analysis, as "U.S. No. 2 or better Sunflower Seed."

The special grade designation, when applicable, also shall be included (under certain conditions outlined in the Grain Inspection Handbook[2]) in the certification.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.708 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.706. The special grade is established and determined as follows:

Infested sunflower seed. Sunflower seed which is infested with live weevils or other insects injurious to stored sunflower seed and/or other grains. As applied to sunflower seed the meaning of the term "infested" is set forth in the Grain Inspection Handbook.[2]

§ 810.709 Special grade designation.

The special grade designation shall be made in addition to all other information prescribed in § 810.707. The grade designation for infested sunflower seed shall, following the words "Sunflower Seed," be signified by the word "Infested."

INTERPRETATIONS

§ 810.904 Interpretation with respect to the term "yellow kernels of corn with a slight tinge of red."

The term "yellow kernels of corn with a slight tinge of red" when used in the Official Grain Standards of the United States for Corn (see § 810.151(c)) shall be construed to include kernels which are yellow and/or light red in color, and kernels which are yellow and dark red in color provided the dark red color covers less than 50 percent of the kernel. Yellow and dark red kernels in which the dark red color covers 50 percent or more of the kernel shall be considered as "corn of other colors."

[31 FR 8113, June 9, 1966. Redesignated at 45 FR 15872, Mar. 11, 1980]

§ 810.905 Interpretations with respect to the term "white kernels of corn with a slight tinge of light straw or pink color."

(a) Except for white waxy corn, the term "white kernels of corn with a slight tinge of light straw or pink color," when used in the United States Standards for Corn (see § 810.351(d)), shall be construed to include kernels which are white and/or light straw or light pink in color, and kernels which are white and pink in color: *Provided,* The pink color covers less than 50 percent of the kernel. White and pink kernels in which the pink color covers 50 percent or more of the kernel shall be considered as "corn of other colors."

(b) For the special grade "waxy," the requirement of "* * * a slight tinge of light straw" shall not be applicable; however, kernels which are "slightly yellow" shall be considered as "corn of other colors." All other color requirements contained in the above paragraph remain in effect for all classes of waxy corn.

[43 FR 2817, Jan. 20, 1978. Redesignated at 45 FR 15872, Mar. 11, 1980]

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[2] See footnote 2 to § 810.702.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Redesignation Table 1

At 45 FR 15872, March 11, 1980, Subpart B of 7 CFR Part 26 was transferred to Part 810, Official U.S. Standards for Grain, of 7 CFR Chapter VIII. Individual sections of 7 CFR Part 26 were redesignated as shown in the following table.

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Terms defined:	
26.201	810.201 Definitions of Barley.
26.202	810.202 Definitions of other terms.
Principles governing the application of the standards:	
26.203	810.203 Basis of determination.
26.204	810.204 Temporary modification in equipment and procedures.
26.205	810.205 Percentages.
Grades, grade requirements, and grade designations:	
26.206	810.206 Grades and grade requirements for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley. (See also § 810.202(c)(1)(i) and (ii); § 810.210(a) through (h); and § 810.211).
26.207	810.207 Grades and grade requirements for the subclass Two-rowed Malting Barley. (See also § 810.202(c)(2)(i); § 810.210(a) through (h) and § 810.211).
26.208	810.208 Grades and grade requirements for the subclass Six-rowed Barley, Two-rowed Barley, and the class Barley. (See also § 810.202(c)(1)(iii), § 810.210(a) through (h) and § 810.211.)
26.209	810.209 Grade designations.
Special grades, special grade requirements and special grade designations:	
26.210	810.210 Special grades and special grade requirements.
26.211	810.211 Special grade designations.
	U.S. STANDARDS FOR OATS
Terms defined:	
26.251	810.251 Definition of Oats.
26.252	810.252 Definitions of other terms.
Principles governing application of standards:	
26.253	810.253 Basis of determination.
26.254	810.254 Temporary modifications in equipment and procedures.
26.255	810.255 Percentages.
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26.256	810.256 Grades and grade requirements for oats.
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26.258	810.258 Special grades and special grade requirements.
26.259	810.259 Special grade designations.
	U.S. STANDARDS FOR WHEAT
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26.301	810.301 Definition of Wheat.
26.302	810.302 Definition of other terms.
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26.303	810.303 Basis of determination.
26.304	810.304 Temporary modifications in equipment and procedures.

Old section	New section
26.305	810.305 Percentages.
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26.306	810.306 Grades and grade requirements.
26.307	810.307 Grade designation.
Special grades, special grade requirements and special grade designations:	
26.308	810.308 Special grade and special grade requirements.
26.309	810.309 Special grade designations.

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26.351	810.351 Terms defined.
26.352	810.352 Principles governing the application of the standards.
26.353	810.353 Grades, grade requirements, and grade designations.

U.S. STANDARDS FOR RYE

26.401	810.401 Terms defined.
26.402	810.402 Grades, grade requirements, and grade designations.
26.403	810.403 Dockage.
26.403a	810.403a Special grade; Plump rye.
26.404	810.404 Special grade; Tough rye.
26.405	810.405 Special grade; Smutty rye.
26.406	810.406 Special grade; Garlicky rye.
26.407	810.407 Special grade; Weevily rye.
26.408	810.408 Special grade; Ergoty rye.
26.409	810.409 Grade factors; definitions.

U.S. STANDARDS FOR MIXED GRAIN

26.451	810.451 Terms defined.
26.452	810.452 Principles governing application of standards.
26.453	810.453 Grades, grade requirements, and grade designations.

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26.552	810.552 Definitions of other terms.
Principles governing application of standards:	
26.553	810.553 Basis of determination.
26.554	810.554 Temporary adjustments in equipment and procedures.
26.555	810.555 Percentages.
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Grades, grade requirements, and grade designations:	
26.557	810.557 Grades and grade requirements for all classes of sorghum (See also § 810.559)
26.558	810.558 Grade designations.
Special grades, special grade requirements, and special grade designations:	
26.559	810.559 Special grades and special grade requirements.

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26.601	810.601 Terms defined.
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EDITORIAL NOTE: At 50 FR 1814, Jan. 14, 1985, certain regulations in 7 CFR Chapter I-Agricultural Marketing Service, Department of Agriculture were transferred to 7 CFR Chapter VII-Agricultural Stabilization and Conservation Service, Department of Agriculture.

The following table reflects the redesignation and transfer of Chapter I and Chapter VII regulations.

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Regulations formerly issued by the Agricultural Marketing Service, Department of Agriculture, were transferred to Chapter VII—Agricultural Stabilization and Conservation Service, Department of Agriculture at 50 FR 1814, Jan. 14, 1985.

All former sections in Chapter I—Agricultural Marketing Service which were affected by documents published in the Federal Register from January 1974 to December 31, 1984, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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